

Code of federal regulations

GS 4-108-38/PL 18-end/402 MF

Pensions, Bonuses, and
Veterans' Relief

ORIGINAL

COMPLETED

38

422

PART 18 TO END

Revised as of July 1, 1982

022 003-94834-4



DOCUMENT AVAILABLE

BEST DOCUMENT AVAILABLE

**Pensions, Bonuses, and
Veterans' Relief**

38

PART 18 TO END

Revised as of July 1, 1982

**CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT**

AS OF JULY 1, 1982

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records Service
General Services Administration
as a Special Edition of
the Federal Register



I

BEST DOCUMENT AVAILABLE

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1982

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

MICROFICHE (24X)

SUBSCRIPTION PRICE:	DOMESTIC--	\$225.00 A YEAR
		\$ 2.25 SINGLE COPY
	FOREIGN--	\$280.00 A YEAR
		\$ 2.85 SINGLE COPY

Table of Contents

	<i>Page</i>
Explanation	
Title 38:	
Chapter I—Veterans Administration (Continued)	3
Finding Aids:	
Material Approved for Incorporation by Reference	377
Table of CFR Titles and Chapters	379
Alphabetical List of Agencies Appearing in the CFR	393
List of CFR Sections Affected	401

BEST DOCUMENT AVAILABLE

Cite this Code C F R

thus: 38 CFR 18.1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a

BEST DOCUMENT AVAILABLE

date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

- (a) The incorporation will substantially reduce the volume of material published in the Federal Register.
- (b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.
- (c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Service, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled **CFR INDEX AND FINDING AIDS**. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,

Director,

Office of the Federal Register.

July 1, 1982.

BEST DOCUMENT AVAILABLE



New Publication

List of CFR Sections Affected

(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 through 27) \$15.00
Volume II (Titles 28 through 50) \$14.00

ORDER FORM Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is \$ _____ check,

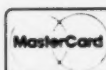
☐ money order, or charge to my

Deposit Account No

_____ - _____

Order No. _____

VISA



Credit Card Orders Only

Total charges \$ _____ Fill in the boxes below

Credit Card No. _____

Expiration Date
Month/Year _____

Please send me _____ copies of the CODE OF FEDERAL REGULATIONS

Volume I \$15.00 Stock No. 022-003-94233-5

Volume II \$14.00 Stock No. 022-003-94234-3

Name—First, Last

Street address

Company name or additional address line

City

State

ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only

Quantity	Charges
_____	Enclosed
_____	To be mailed
_____	Subscriptions
Postage	_____
Foreign handling	_____
MMOB	_____
OPNR	_____
_____	UPNS
_____	Discount
_____	Refund

VIII

THIS TITLE

Title 38—PENSIONS, BONUSES AND VETERANS' RELIEF is composed of two volumes, Parts 0-17 and Part 18 to the end. The contents of these volumes represent all current regulations of the Veterans' Administration codified under this title of the CFR as of July 1, 1982.

For this volume Roger Pacella was the Chief Editor, assisted by Donna L. Rickett and Gertrude E. Belton. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

Title 38—Pensions, Bonuses, and Veterans' Relief

This book contains Part 18 to End

CHAPTER I—Veterans Administration (Continued)	<i>Part</i> 18
---	-------------------

BLANK PAGE

2

CHAPTER I—VETERANS ADMINISTRATION— CONTINUED

(Part 18 to End)

<i>Part</i>		<i>Page</i>
18	Nondiscrimination in federally-assisted programs of the Veterans Administration—effectuation of Title VI of the Civil Rights Act of 1964	4
18a	Delegation of responsibility in connection with Title VI, Civil Rights Act of 1964	31
18b	Practice and procedure under Title VI of the Civil Rights Act of 1964 and Part 18 of this chapter	33
19	Board of Veterans Appeals	43
21	Vocational rehabilitation and education	56
25	Relocation assistance and land acquisition under Federal and federally assisted programs	235
26	Environmental effects of VA actions	251
36	Loan guaranty	257
39	State cemetery grants	263

BEST DOCUMENT AVAILABLE

§ 18.1

Title 38—Pensions, Bonuses, and Veterans' Relief

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

Sec.

- 18.1 Purpose.
- 18.2 Application of this part.
- 18.3 Discrimination prohibited.
- 18.4 Assurances required.
- 18.6 Compliance information.
- 18.7 Conduct of investigations.
- 18.8 Procedure for effecting compliance.
- 18.9 Hearings.
- 18.10 Decisions and notices.
- 18.11 Judicial review.
- 18.12 Effect on other regulations, forms and instructions.
- 18.13 Definitions.

APPENDIX A—STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

APPENDIX B—ILLUSTRATIVE APPLICATIONS

Subparts B—C—[Reserved]

Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

GENERAL PROVISIONS

- 18.401 Purpose.
- 18.402 Application.
- 18.403 Definitions.
- 18.404 Discrimination prohibited.
- 18.405 Assurances required.
- 18.406 Remedial action, voluntary action and self-evaluation.
- 18.407 Designation of responsible employee and adoption of grievance procedures.
- 18.408 Notice.
- 18.409 Administrative requirements for certain recipients.
- 18.410 Effect of State or local law or other requirements and effect of employment opportunities.

EMPLOYMENT PRACTICES

- 18.411 Discrimination prohibited.
- 18.412 Reasonable accommodation.
- 18.413 Employment criteria.
- 18.414 Preemployment inquiries.

PROGRAM ACCESSIBILITY

- 18.421 Discrimination prohibited.
- 18.422 Existing facilities.
- 18.423 New construction.

ELEMENTARY, SECONDARY, AND ADULT EDUCATION

Sec.

- 18.431 Application.
- 18.432 Location and notification.
- 18.433 Free appropriate public education.
- 18.434 Education setting.
- 18.435 Evaluation and placement.
- 18.436 Procedural safeguards.
- 18.437 Nonacademic services.
- 18.438 Adult education programs.
- 18.439 Private education programs.

POSTSECONDARY EDUCATION

- 18.441 Application.
- 18.442 Admissions and recruitment.
- 18.443 General treatment of students.
- 18.444 Academic adjustments.
- 18.445 Housing.
- 18.446 Financial and employment assistance to students.
- 18.447 Nonacademic services.

HEALTH AND SOCIAL SERVICES

- 18.451 Application
- 18.452 Health and other social services.
- 18.453 Drug and alcohol addicts.
- 18.454 Education of institutionalized persons.

PROCEDURES

- 18.461 Procedures.

APPENDIX A—STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

Subpart A—General

AUTHORITY: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A.

SOURCE: 29 FR 19301, Dec. 31, 1964, unless otherwise noted. Designated as Subpart A at 45 FR 63268, Sept. 24, 1980.

§ 18.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Veterans Administration.

§ 18.2 Application of this part.

This part applies to any program for which Federal financial assistance is

authorized under a law administered by the Veterans Administration, including the federally-assisted programs and activities listed in Appendix A to this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 18.3. The fact that a program or activity is not listed in Appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part by notice published in the *FEDERAL REGISTER*.

[38 FR 17965, July 5, 1973]

§ 18.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies on the grounds of race,

§ 18.4

Title 38—Pensions, Bonuses, and Veterans' Relief

color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(d) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which Part 18 applies, is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination,

upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 (3 CFR Chapter IV) or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (d)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (d)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17965, July 5, 1973; 42 FR 60144, Nov. 25, 1977]

§ 18.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real prop-

erty or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR Subpart 101-6.2).

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible agency official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In any case in which the recipient is claiming financial assistance under a continuing program pursuant to arrangements entered into prior to the effective date of this part, the assurances provided by this paragraph shall be included in the first application or claim for assistance

on or after the effective date of this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible agency official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Extent of application to institution or facility.* In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible agency official if the party furnishing the assurances establishes to the satisfaction of the responsible agency official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of

§ 18.6

Title 38—Pensions, Bonuses, and Veterans' Relief

the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

[38 FR 17965, July 5, 1973]

§ 18.6 Compliance information.

(a) *Cooperation and assistance.* Each responsible agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for the agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or

person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973]

§ 18.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible agency official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will initiate a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph

(c) of this section indicates a failure to comply with this part, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 18.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973]

§ 18.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 18.4.* If an applicant fails or refuses to furnish an

assurance required under § 18.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Veterans Administration shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Veterans Administration shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 18.10(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by the Veterans Administration until (1) the responsible agency official has de-

BEST DOCUMENT AVAILABLE

§ 18.9

Title 38—Pensions, Bonuses, and Veterans' Relief

terminated that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973]

§ 18.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 18.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 18.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Veterans Administration in Washing-

ton, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the Veterans Administration requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, U.S.C., or detailed under section 3344 of title 5, U.S.C.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Veterans Administration shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing decision and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Veterans Administration and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the sub-

Chapter I—Veterans Administration

§ 18.10

stance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 18.10.

[29 FR 19301, Dec. 28, 1964, as amended at 38 FR 17966, July 5, 1973]

§ 18.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the

final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 18.9(a) a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision by a hearing examiner which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such

§ 18.11

Title 38—Pensions, Bonuses, and Veterans' Relief

program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this section and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973]

§ 18.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 18.12 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Veterans Administration which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 10925 (3 CFR, 1959-1963 Comp., p. 448), 11114 (3 CFR, 1959-1963, p. 774), and 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder, or

(2) Executive Order 11063 (3 CFR, 1959-1963 Comp., p. 652) and regulations issued thereunder, or any other orders, regulations or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency officials shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to pro-

grams to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of the Veterans Administration or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 18.10) including the achievement of effective coordination and maximum uniformity within the Veterans Administration and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action has been taken by the responsible official of this Agency.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17967, July 5, 1973]

§ 18.13 Definitions.

As used in this part:

(a) The term "agency" means the Veterans Administration, and includes each of its operating agencies and other organization units.

(b) The term "Administrator" means the Administrator of Veterans Affairs.

(c) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Administrator or other official of the Veterans Administration or an official of another department or agency to the extent the Administrator has delegated his authority to such official.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants of Feder-

al funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program," except those specifically excluded in § 18.2, includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals conducted under a law administered by the Veterans Administration, including but not limited to the programs and activities listed in Appendix A to this part. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individ-

ual, in the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "applicant" means a person who submits an application, request, or plan required to be approved by the Administrator, or by a recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17967, July 5, 1973]

APPENDIX A—STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

1. Payments to State homes (38 U.S.C. 641).
2. State home facilities for furnishing nursing home care (38 U.S.C. 5031-5037).
3. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 3402(a)(2)).
4. Vocational Rehabilitation, Veterans Educational Assistance, War Orphans' Educational Assistance, and Administration of Educational Assistance (38 U.S.C. chapters 31, 34, 35, and 36, respectively).
5. Exchange of Medical Information (38 U.S.C. 5055).
6. Grants for Assistance in Remodeling, Modification or Alteration of Existing State Home Hospital and Domiciliary Facilities (38 U.S.C. 644).

[33 FR 10516, July 24, 1968, as amended at 35 FR 13133, Aug. 18, 1970]

APPENDIX B—ILLUSTRATIVE APPLICATIONS

The following examples, without being exhaustive, will illustrate the application of the nondiscrimination provisions to certain grants of the Veterans Administration. (In all cases the discrimination prohibited is discrimination on the grounds of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grants which support the provision of health or welfare services for veterans in State homes, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the State as grantee under the program

or by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 18.3(c).

(b) In grants to assist in the construction of facilities for the provision of health or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of a State home for furnishing nursing home care, assurances will be required that there will be no discrimination in the admission or treatment of patients. In the case of such grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the nursing home, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith.

(c) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of a nursing home which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program with respect to individuals of a particular race, color, or national origin.

(38 U.S.C. 641, 644, 5031-5037, 5055, 3402(a)(2), Chapters 31, 34, 35 and 36)

[38 FR 17968, July 5, 1973]

Subparts B-C—[Reserved]

Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act

Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 122(d)(2), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, 92 Stat. 2985 (29 U.S.C. 794).

SOURCE: 45 FR 63268, Sept. 24, 1980, unless otherwise noted.

GENERAL PROVISIONS

§ 18.401 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 18.402 Application.

This part applies to each recipient of Federal financial assistance from the Veterans Administration and to each program or activity that receives or benefits from such assistance.

§ 18.403 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 *et seq.*

(d) "Agency" means the Veterans Administration.

(e) "Administrator" means the Administrator of Veterans Affairs.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, re-

quest, or plan required to be approved by an Agency official or by a recipient as a condition to eligibility for Federal financial assistance.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds, including funds extended to any entity for payment to or on behalf of students admitted to that entity, extended directly to those students for payment to that entity, or extended directly to those students contingent upon their participation in a program of education or training of that entity;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) Handicapped person means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs including speech organs; respiratory; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(C) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(C) Has none of the impairments defined in paragraph (j)(2)(i) of this section, but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public elementary, secondary, or adult educational services, a handicapped person:

(i) Of an age during which nonhandicapped persons are provided such services;

(ii) Of any age during which it is mandatory under State laws to provide such services to handicapped persons; or

(iii) To whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 18.404 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must give handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections that:

(i) Have the effect of excluding handicapped persons from, deny them the benefits of, or otherwise subject

them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) *Special communication.* Recipients shall take appropriate action to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 18.405 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Administrator, that the program will be operated in compliance with this part.

(b) *Duration of obligation.* (1) When Federal financial assistance is extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where Federal financial assistance is extended to provide personal property, the assurance will obligate

the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility unless the applicant establishes, to the satisfaction of the Administrator, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such a program. If the assistance is being received or requested for the construction of a facility or part of a facility, the assurance shall apply to the entire facility and to other facilities operated in connection with the facility.

(d) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property if there is a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for

the purpose for which the property was transferred, the Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she considers appropriate, agree to forbear the exercise of the right to revert title for as long as the lien of the mortgage or other encumbrance remains effective.

(e) *Other methods of enforcement.*

(1) Recipients are required to keep such records as the responsible VA official deems necessary for complete and accurate compliance reports. The VA can specify intervals for reporting and prescribe the form and content of information required to ascertain whether the recipient has complied or is complying with the law.

(2) Periodic compliance reviews of training establishments will be conducted by VA compliance officers. During these reviews recipients are required to permit access by VA compliance officers during normal business hours to such of their books, records, accounts, facilities and other sources of information including interviews with personnel and trainees as may be pertinent to ascertain compliance with the law.

(3) From study of documentation, results of interviews, and observation of activities during tours of facilities, compliance officers will evaluate recipients' compliance status.

§ 18.406 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Administrator finds that a recipient has discriminated against qualified persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Administrator considers necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against qualified persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Administrator, where appropriate, may require either or

both recipients to take remedial action.

(3) The Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action with respect to:

(i) Handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred;

(ii) Handicapped persons who would have been participants in the program had the discrimination not occurred; or

(iii) Handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects of the policies and practices that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public in-

spection, and provide to the Administrator upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(3) Recipients who become such more than one year after the effective date of these regulations shall complete these self-evaluation requirements within one year after becoming recipients of Federal financial assistance.

§ 18.407 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 18.408 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment, or employment in, its programs and activities. The notification shall also include an identification of the responsible

employee designated under § 18.407. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memorandums or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 18.409 Administrative requirements for certain recipients.

The Administrator may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 18.407 and 18.408 in whole or in part, when the Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 18.410 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

EMPLOYMENT PRACTICES

§ 18.411 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination in employment. The relationships referred to in this section include relationships with employment and referral agencies, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* Nondiscrimination in employment applies to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or other forms of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selec-

tion for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) *Collective bargaining agreements.* A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 18.412 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee if such accommodation would enable him or her to perform the essential functions of the job unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.

(c) In determining under paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's work force; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 18.413 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Administrator to be available.

(b) A recipient shall select and administer tests concerning employment to best ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflect the applicant's or employee's impaired sensory, manual, or speaking skills (except when those skills are the factors that the test purports to measure).

§ 18.414 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into the applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 18.406(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 18.406(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what

extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

PROGRAM ACCESSIBILITY

§ 18.421 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the

benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 18.422 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such measures as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with § 18.423 or any other methods that make its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in making its programs or activities readily accessible to handicapped persons. In choosing among available methods for complying with paragraph (a) of this section, a recipient shall give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare or other social service providers, and recipients that operate other than educational programs or activities.* If a recipient with fewer than fifteen employees finds after consultation with a handicapped person seeking its services that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the qualified handicapped person to other providers whose services are accessible. Where referrals are necessary, trans-

portation costs shall not exceed costs to and from recipients' programs.

(d) *Time period.* A recipient shall comply with paragraph (a) of this section within 60 days of the effective date of this part except that when structural changes in facilities are necessary, these changes shall be made as soon as practicable, but not later than three years after the effective date of this part.

(e) *Transition plan.* If structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop a transition plan within six months of the effective date of this part setting forth the steps necessary to complete such change. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 18.423 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the

construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Building and Facilities Accessible to, and Usable by, the Physically Handicapped,"¹ published by the American National Standards Institute, Inc. (ANSI A117.1-1961(R1971)), which was approved on May 2, 1978 for incorporation by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to and usability of the facility is provided.

ELEMENTARY, SECONDARY, AND ADULT EDUCATION

§ 18.431 Application.

Sections 18.431—18.439 apply to elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.432 Location and notification.

A recipient that operates a public elementary or secondary educational program shall annually:

¹ Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY, 10018. A copy of this standard is on file in the Federal Register Library.

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons their parents or guardians of the recipients's duty under §§ 18.431—18.439.

§ 18.433 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) The provision of an appropriate education is the provision of regular or special education and related aids and services that:

(i) Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and

(ii) Are based upon adherence to procedures that satisfy the requirements of §§ 18.434, 18.435, and 18.436.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a qualified handicapped person in or refer that person to a program other than the one that it operates as its means of carrying out the requirements of §§ 18.431—18.439. The recipients remain responsible for ensuring that the requirements of §§ 18.431—18.439 are met with respect to any qualified handicapped person so placed or referred.

(c) *Free education.* (1) The provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped

person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of §§ 18.431—18.439, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) If a recipient places a handicapped person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost that would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) If a recipient has made available, in conformance with this section and § 18.434, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or regarding the question of financial responsibility are subject to the due process procedures of § 18.436.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this part, in full compliance with the requirements of paragraphs (a) through (c) of this section shall meet those requirements at the earliest practicable

time, but not later than October 1, 1981.

§ 18.434 Education setting.

(a) *Academic setting.* A recipient shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. In deciding whether to place a person in a setting other than the regular educational environment, a recipient shall consider the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in those activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient in compliance with paragraph (a) of this section operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided in that facility are comparable to the other facilities, services, and activities of the recipient.

§ 18.435 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation of any qualified person who, because of handicap, needs or is believed to need special education or related services before taking any action concerning the initial placement of the person in a regular or special program and any subsequent change in placement.

(b) *Evaluation procedures.* Elementary, secondary, and adult education

programs and activities that receive or benefit from Federal financial assistance shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflect the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure.)

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;

(2) Establish procedures to ensure that information obtained from all sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options; and

(4) Ensure that the placement decision is made in accordance with § 18.434.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with

paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 18.436 Procedural safeguards.

(a) A recipient that operates a public elementary or secondary education program shall implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. The system shall include:

- (1) Notice;
- (2) An opportunity for the parents or guardian of the person to examine relevant records;
- (3) An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel; and
- (4) Review procedure.

(b) Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 18.437 Nonacademic services.

(a) *General.* (1) Elementary, secondary, and adult education programs that receive or benefit from Federal financial assistance shall provide nonacademic and extracurricular services and activities in a manner which gives handicapped students an equal opportunity for participation in these services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* Elementary, secondary, and adult education programs that receive or benefit from

Federal financial assistance and that provide personal, academic, or vocational counseling, guidance, or placement services to their students shall provide these services without discrimination on the basis of handicap and shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, an elementary, secondary, or adult education program or activity that receives or benefits from Federal financial assistance may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural activities shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 18.434 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 18.438 Adult education programs.

A recipient that operates an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. The recipient shall take into account the needs of these persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 18.439 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not on the basis of handicap, exclude a qualified handicapped person from that program if

the person can, with minor adjustments, be provided an appropriate education, as defined in § 18.433(b)(1), within the recipient's program.

(b) A recipient may not charge more for providing an appropriate education to handicapped persons than to non-handicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate those programs in accordance with §§ 18.435 and 18.436. Each recipient to which this section applies is subject to §§ 18.434, 18.437, and 18.438.

POSTSECONDARY EDUCATION

§ 18.441 Application.

Sections 18.441-18.447 apply to postsecondary education programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.442 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

(b) *Admission.* In administering its admission policies, a recipient;

(1) May not apply limitations on the number or proportion of handicapped persons who may be admitted;

(2) May not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Administrator to be available;

(3) Shall assure itself that:

(i) Admissions tests are selected and administered to best ensure that,

when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiries as to whether an applicant for admission is a handicapped person. After admission, the recipient may inquire on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination under § 18.406(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity under § 18.406(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped.

(1) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient shall state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question to monitor the general validity of the test scores.

§ 18.443 General treatment of students.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other program or activity operated by a recipient to which this subpart applies.

(b) A recipient that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient shall operate its programs and activities in the most integrated setting appropriate.

§ 18.444 Academic adjustments.

(a) *Academic requirements.* A recipient shall make necessary modifications to its academic requirements to ensure that these requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which

specific courses are conducted. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by the student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section.

(b) *Other rules.* A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or guide dogs in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills that will best ensure that the results of the evaluation represent the students' achievement in the course, rather than reflect the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient shall ensure that no qualified handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 18.445 Housing.

(a) *Housing provided by a recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to qualified handicapped students at the same cost as to others. At the end of the transition period provided for in § 18.422(e), this housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 18.446 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall

assure itself that these employment opportunities, as a whole, are made available in a manner that would not violate §§ 18.411-18.414 if the opportunities were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates §§ 18.411-18.414.

§ 18.447 Nonacademic services.

(a) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 18.443(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of these organizations do not permit discrimination

otherwise prohibited by §§ 18.441-18.447.

HEALTH AND SOCIAL SERVICES

§ 18.451 Application.

Subpart F applies to health, and other social service programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.452 Health and other social services.

(a) *General.* In providing health, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Give a qualified handicapped person the opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons.

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 18.404(b)(2)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights of consent to treatment shall ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency care.

(d) *Auxiliary aids.* (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to give these persons an equal opportunity to benefit from the service in question.

(2) The Administrator may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) Auxiliary aids may include brailled and taped material, interpreters, and aids for persons with impaired hearing or vision.

§ 18.453 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not discriminate, with regard to a drug or alcohol abuser or alcoholic who is suffering from a medical condition, in the admission of that person for treatment of the medical condition, or in the treatment of the medical condition because of the person's drug or alcohol abuse or alcoholism.

§ 18.454 Education of institutionalized persons.

A recipient that operates or supervises a program or activity for persons who are institutionalized because of handicap and is responsible for providing training shall ensure that each qualified handicapped person, as defined in § 18.403(k)(2), in its program or activity is provided an appropriate education, as defined in § 18.403(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under §§ 18.431-18.439.

PROCEDURES

§ 18.461 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 18.6 through 18.11 and Part 18b of this chapter.

APPENDIX A—STATUTORY PROVISIONS
TO WHICH THIS PART APPLIES

1. Payments to State Homes (38 U.S.C. 641-643).
2. State home facilities for furnishing domiciliary, nursing home, and hospital care (38 U.S.C. 5031-5037).
3. Community nursing home care (38 U.S.C. 620).
4. Sharing of medical facilities, equipment, and information (38 U.S.C. 5051-5057).
5. Assistance in establishing new state medical schools, grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. Chapter 82).
6. Approval of educational institutions (38 U.S.C. 104).
7. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).
8. Space and office facilities for representatives of State employment service (38 U.S.C. 244(4)).
9. Space and office facilities for representatives of recognized national service organizations (38 U.S.C. 3402(a)(2)).
10. Vocational rehabilitation, post-Vietnam era veterans educational assistance, and administration of educational assistance (38 U.S.C. Chapters 31, 32, 34, 35 and 36 respectively).
11. Automobile and adaptive equipment for certain disabled veterans and members of the Armed Forces (38 U.S.C. Chapter 39).
12. Burial benefits (38 U.S.C. Chapter 23).

PART 18a—DELEGATION OF RESPONSIBILITY IN CONNECTION WITH TITLE VI, CIVIL RIGHTS ACT OF 1964

Sec.

- 18a.1 Delegations of responsibility between the Administrator and the Secretary, Department of Health, Education, and Welfare.
- 18a.2 Delegation to the Chief Benefits Director.
- 18a.3 Delegation to the Chief Medical Director.
- 18a.4 Duties of the Director, Contract Compliance Service.
- 18a.5 Delegation to the General Counsel.

AUTHORITY: 5 U.S.C. 301, 38 U.S.C. 210(c)(1) and 38 CFR 18.9(d) and Appendix A, Part 18.

SOURCE: 35 FR 10759, July 2, 1970, unless otherwise noted.

§ 18a.1 Delegations of responsibility between the Administrator and the Secretary, Department of Health, Education, and Welfare.

(a) Authority has been delegated to the Administrator of Veterans Affairs by the Secretary, Department of Health, Education, and Welfare to perform responsibilities of the Department of Health, Education, and Welfare and of the responsible HEW official under Title VI of the Civil Rights Act of 1964 and the Department's regulations issued thereunder (45 CFR Part 80) with respect to: proprietary (i.e., other than public or nonprofit) educational institutions, except if operated by a hospital; and post secondary, nonprofit, educational institutions other than colleges and universities, except if operated by a college or university, a hospital, or a unit of State or local government (i.e., those operating such institutions as an elementary or secondary school, an area vocational school, a school for the handicapped, etc.).

(1) The compliance responsibilities so delegated include:

(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under 45 CFR 80.4;

(ii) All actions under 45 CFR 80.6 including mailing, receiving, and evaluating compliance reports under § 80.6(b); and

(iii) All other actions related to securing voluntary compliance, or related to investigations, compliance reviews, complaints, determinations of apparent failure to comply, and resolutions of matters by informal means.

(2) The Department of Health, Education, and Welfare specifically reserves to itself the responsibilities for the effectuation of compliance under 45 CFR 80.8, 80.9, and 80.10.

(b) Authority has been delegated to the Secretary, Department of Health, Education, and Welfare, to perform responsibilities of the Veterans Administration and of the responsible Veterans Administration official under Title VI of the Civil Rights Act of 1964 and the Veterans Administration regulations issued thereunder (Part 18 of this chapter) with respect to institutions of higher learning, including

post-high school institutions which offer nondegree courses for which credit is given and which would be accepted on transfer by a degree-granting institution toward a baccalaureate or higher degree; hospitals and other health facilities and elementary and secondary schools and school systems including, but not limited to, their activities in connection with providing or seeking approval to provide vocational rehabilitation to eligible persons under chapter 31 of title 38, United States Code, or education or training to eligible persons under chapters 34, 35, or 36 of title 38, United States Code.

(1) The compliance responsibilities so delegated include:

(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under § 18.4 of this chapter;

(ii) Mailing, receiving, and evaluating compliance reports under § 18.6(b) of this chapter; and

(iii) All other actions related to securing voluntary compliance or related investigations, compliance reviews, complaints, determinations of apparent failure to comply and resolutions of matters by informal means.

(2) The Veterans Administration specifically reserves to itself responsibilities for effectuation of compliance under §§ 18.8, 18.9, and 18.10 of this chapter. Not included in the delegation to the Secretary, Department of Health, Education, and Welfare and specifically reserved to the Veterans Administration is the exercise of compliance responsibilities with respect to:

(i) Postsecondary schools which do not offer a program or courses leading, or creditable, towards the granting of at least a bachelor's degree, or its equivalent;

(ii) Privately-owned and operated proprietary technical, vocational, and other private schools at the elementary or secondary level; and

(iii) Those institutions of higher learning and elementary and secondary schools and school systems which, as of January 3, 1969, have already been subjected to formal noncompliance proceedings by the Department of Health, Education, and Welfare and have had their right to receive Federal

financial assistance from that agency terminated for noncompliance with Title VI of the Civil Rights Act of 1964.

The Veterans Administration also retains the right to exercise delegated compliance responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health, Education, and Welfare.

(c) Any institution of higher learning or a hospital or other health facility which is listed by the Department of Health, Education, and Welfare as having filed an assurance of compliance will be accepted as having met the requirements of the law for the purpose of payment under 38 U.S.C. chapters 31, 34, 35, or 36 and 38 U.S.C. sections 641, 5031-5037, and 5055.

(d) If the Department of Health, Education, and Welfare finds that a school, hospital or other health facility which has signed an assurance of compliance is apparently in noncompliance, action will be initiated by that Department to obtain compliance by voluntary means. If voluntary compliance is not achieved, the Veterans Administration will join in subsequent proceedings.

(e) An institution which is on the Department of Health, Education, and Welfare list of noncomplying institutions will be considered to be in a status of compliance for Veterans Administration purposes if an assurance of compliance is filed with the Veterans Administration and actual compliance is confirmed. Certificates of eligibility may be issued and enrollments approved and other appropriate payments made until such time as the Veterans Administration has made an independent determination that the institution is not in compliance.

§ 18a.2 Delegation to the Chief Benefits Director.

The Chief Benefits Director is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education, and special restorative training to implement Title VI, Civil Rights Act of 1964. Authority is delegated to him and his designee to take any necessary

action as to programs of vocational rehabilitation, education, or special restorative training under 38 U.S.C. chapters 31, 34, 35, and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Administrator has delegated responsibility for various schools or training establishments to implement Part 18 of this chapter. The Chief Benefits Director also is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

§ 18a.3 Delegation to the Chief Medical Director.

The Chief Medical Director is delegated responsibility for obtaining evidence of voluntary compliance implementing the provisions of title VI, Civil Rights Act of 1964, in connection with payments to State homes, with State home facilities for furnishing nursing home care, and from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

§ 18a.4 Duties of the Director, Contract Compliance Service.

Upon referral by the Chief Medical Director or the Chief Benefits Director, the Director, Contract Compliance Service will:

(a) Investigate and process all complaints arising under title VI of the Civil Rights Act of 1964;

(b) Conduct periodic audits, reviews and evaluations;

(c) Attempt to secure voluntary compliance by conciliatory or other informal means whenever investigation of a complaint, compliance review, failure to furnish assurance of compliance, or other source indicates noncompliance with title VI; and

report to the Chief Medical Director or the Chief Benefits Director, whichever is appropriate, the results of his investigations, audits, reviews and evaluations or the results of his attempts to secure voluntary compliance.

§ 18a.5 Delegation to the General Counsel.

The General Counsel is delegated the responsibility, upon receipt of information from the Chief Benefits Director, the Chief Medical Director, or the designee of either of them, that compliance cannot be secured by voluntary means, of forwarding to the recipient or other person the notice required by § 18.9(a) of this chapter, and also is delegated the responsibility of representing the agency in all proceedings resulting from such notice.

PART 18b—PRACTICE AND PROCEDURE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND PART 18 OF THIS CHAPTER

GENERAL RULES

Sec.

- 18b.1 Scope of rules.
- 18b.2 Reviewing authority.
- 18b.9 Definitions.
- 18b.10 Records to be public.
- 18b.11 Use of gender and number.
- 18b.12 Suspension of rules.

APPEARANCE AND PRACTICE

- 18b.13 Appearance.
- 18b.14 Authority for representation.
- 18b.15 Exclusion from hearing for misconduct.

PARTIES

- 18b.16 Parties.
- 18b.17 Amici curiae.
- 18b.18 Complainants not parties.

DOCUMENTS

- 18b.20 Form of documents to be filed.
- 18b.21 Signature of documents.
- 18b.22 Filing and service.
- 18b.23 Service; how made.
- 18b.24 Date of service.
- 18b.25 Certificate of service.

TIME

- 18b.26 Computation.
- 18b.27 Extension of time or postponement.
- 18b.28 Reduction of time to file documents.

PROCEEDINGS BEFORE HEARING

- 18b.30 Notice of hearing or opportunity for hearing.
- 18b.31 Answer to notice.
- 18b.32 Amendment of notice or answer.
- 18b.33 Request for hearing.
- 18b.34 Consolidation.
- 18b.35 Motions.

Sec.

- 18b.36 Responses to motions and petitions.
- 18b.37 Disposition of motions and petitions.

RESPONSIBILITIES AND DUTIES OF PRESIDING OFFICER

- 18b.40 Who presides.
- 18b.41 Designation of hearing examiner.
- 18b.42 Authority of presiding officer.

HEARING PROCEDURES

- 18b.50 Statements of position and trial briefs.
- 18b.51 Evidentiary purpose.
- 18b.52 Testimony.
- 18b.53 Exhibits.
- 18b.54 Affidavits.
- 18b.55 Depositions.
- 18b.56 Admissions as to facts and documents.
- 18b.57 Evidence.
- 18b.58 Cross-examination.
- 18b.59 Un-sponsored written material.
- 18b.60 Objections.
- 18b.61 Exceptions to rulings of presiding officer unnecessary.
- 18b.62 Official notice.
- 18b.63 Public document items.
- 18b.64 Offer of proof.
- 18b.65 Appeals from ruling of presiding officer.

THE RECORD

- 18b.66 Official transcript.
- 18b.67 Record for decision.

POSTHEARING PROCEDURES; DECISIONS

- 18b.70 Posthearing briefs; proposed findings and conclusions.
- 18b.71 Decisions following hearing.
- 18b.72 Exceptions to initial or recommended decisions.
- 18b.73 Final decisions.
- 18b.74 Oral argument to the reviewing authority.
- 18b.75 Review by the Administrator.
- 18b.76 Service on amici curiae.

POSTHEARING AGENCY ACTIONS

- 18b.77 Final agency action.

JUDICIAL STANDARDS OF PRACTICE

- 18b.90 Conduct.
- 18b.91 Improper conduct.
- 18b.92 Ex parte communications.
- 18b.93 Expeditious treatment.
- 18b.94 Matters not prohibited.
- 18b.95 Filing of ex parte communications.

AUTHORITY: 5 U.S.C. 301, 38 U.S.C. 210(c)(1) and 38 CFR 18.9(d) and Appendix A, Part 18.

SOURCE: 35 FR 10760, July 2, 1970, unless otherwise noted.

GENERAL RULES

§ 18b.1 Scope of rules.

The rules of procedure in this part supplement §§ 18.9 and 18.10 of this chapter and govern the practice for hearings, decisions, and administrative review conducted by the Veterans Administration pursuant to title VI of the Civil Rights Act of 1964 (sec. 602, 78 Stat. 252) and Part 18 of this chapter.

§ 18b.2 Reviewing authority.

The term "reviewing authority" means the Administrator of Veterans Affairs, or any person or persons acting pursuant to authority delegated by him to carry out responsibility under § 18.10 of this chapter. The term includes the Administrator with respect to action by him under § 18b.75.

§ 18b.9 Definitions.

The definitions contained in § 18.13 of this chapter apply to this part, unless the context otherwise requires.

§ 18b.10 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420.

§ 18b.11 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 18b.12 Suspension of rules.

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

APPEARANCE AND PRACTICE

§ 18b.13 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

§ 18b.14 Authority for representation.

Any individual acting in any proceeding may be required to show his authority to act in such capacity.

§ 18b.15 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

PARTIES

§ 18b.16 Parties.

The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him as respondent. The agency shall also be deemed a party to all proceedings and shall be represented by the General Counsel.

§ 18b.17 Amici curiae.

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially

to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

§ 18b.18 Complainants not parties.

A person submitting a complaint pursuant to § 18.7(b) of this chapter is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.

DOCUMENTS

§ 18b.20 Form of documents to be filed.

Documents to be filed shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

§ 18b.21 Signature of documents.

The signature of a party, authorized officer, employee, or attorney constitutes a certificate that he has read the

document, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

§ 18b.22 Filing and service.

All notices by a Veterans Administration official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Veterans Administration official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8 a.m. to 4:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 18b.76.

§ 18b.23 Service; how made.

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative, will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be airmailed if the addressee is more than 300 miles distant.

§ 18b.24 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

§ 18b.25 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

TIME

§ 18b.26 Computation.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

§ 18b.27 Extension of time or postponement.

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted, if made promptly.

§ 18b.28 Reduction of time to file documents.

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before

them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 18 of this chapter.

PROCEEDINGS BEFORE HEARING

§ 18b.30 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to §§ 18.9 and 18a.5 of this chapter.

§ 18b.31 Answer to notice.

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

§ 18b.32 Amendment of notice or answer.

The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

§ 18b.33 Request for hearing.

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.

§ 18b.34 Consolidation.

The reviewing authority may provide for proceedings in the Veterans Administration to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of hearing or opportunity for hearing shall be served with notice of such consolidation.

§ 18b.35 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.

§ 18b.36 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

§ 18b.37 Disposition of motions and petitions.

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to

expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however*, That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in his discretion expressly so orders.

RESPONSIBILITIES AND DUTIES OF PRESIDING OFFICER

§ 18b.40 Who presides.

A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly sec. 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules or procedure apply.

§ 18b.41 Designation of hearing examiner.

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 18b.42 Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part, or in conformity with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).

HEARING PROCEDURES

§ 18b.50 Statements of position and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

§ 18b.51 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part 18 of this chapter. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 18b.70. Thereafter the proceedings shall go to conclusion in accordance with §§ 18b.70 through 18b.76. The presiding officer may allow an appeal from such order in accordance with § 18b.65.

§ 18b.52 Testimony.

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 18b.54 and 18b.55, witnesses shall be available at the hearing for cross-examination.

§ 18b.53 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 18b.54 Affidavits.

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 18b.55 Depositions.

Upon such terms as may be just, for the convenience of the parties or of the Veterans Administration, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

§ 18b.56 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying spe-

cifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

§ 18b.57 Evidence.

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

§ 18b.58 Cross-examination.

A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

§ 18b.59 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 18b.60 Objections.

Objections to evidence shall be timely and briefly state the ground relied upon.

§ 18b.61 Exceptions to rulings of presiding officer unnecessary.

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

§ 18b.62 Official notice.

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be af-

forded an opportunity to show the contrary.

§ 18b.63 Public document items.

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

§ 18b.64 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 18b.65 Appeals from ruling of presiding officer.

Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be

heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to him for decision, the reviewing authority may direct the presiding officer to certify any question or the entire record to him for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

THE RECORD

§ 18b.66 Official transcript.

The Veterans Administration will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Veterans Administration. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Veterans Administration and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 18b.67 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

POSTHEARING PROCEDURES; DECISIONS

§ 18b.70 Posthearing briefs; proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of authorities relied upon.

§ 18b.71 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer shall certify the

entire record, including his recommended findings and proposed decision, to the reviewing authority; or if so authorized he shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

§ 18b.72 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

§ 18b.73 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 18b.72, such decision shall become the final decision of the Veterans Administration, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly sec. 10(c) of the Administrative Procedure Act), subject to the provisions of § 18b.75.

(b) Where the hearing is conducted by a hearing examiner who makes a recommended decision or upon the filing of exceptions to a hearing examiner's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue his own decision thereon, which shall become the final decision of the Veterans Administration, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly sec. 10(c) of the Administrative Procedure Act), subject to the provisions of § 18b.75.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

§ 18b.74 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in his discretion. If granted, he will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the agency hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the agency hearing clerk at least 7 days before the argument.

§ 18b.75 Review by the Administrator.

Within 20 days after an initial decision becomes a final decision pursuant to § 18b.73(a), or within 20 days of the mailing of a final decision referred to in § 18b.73(b), as the case may be, a party may request the Administrator to review the final decision. The Administrator may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Administrator grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Administrator's proposed action within which to file exceptions to the decision and supporting briefs and

memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this section shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

§ 18b.76 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in §§ 18b.70 through 18b.76 shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 18b.50 shall be served on amici.

POSTHEARING AGENCY ACTIONS

§ 18b.77 Final agency action.

(a) The final decision of the hearing examiner or reviewing authority that a school or training establishment is not in compliance will be referred by the reviewing authority to the Administrator for approval as required by § 18.10(e) of this chapter. The finding will be accompanied by letters from the Administrator to the House Veterans' Affairs Committee and the Senate Committee on Labor and Public Welfare containing a full report on the circumstances as required by § 18.8(c) of this chapter, the reasons for the proposed action and a statement that the proposed action will become the final agency action 30 days after the date of the letter.

(b) A copy of the letters to the congressional committees will be sent to all parties to the proceedings.

JUDICIAL STANDARDS OF PRACTICE

§ 18b.90 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to re-

strain his principal from improprieties in connection with a proceeding.

§ 18b.91 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the reviewing authority by undertaking to bring pressure or influence to bear upon him or any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper that such interested persons or any members of the Veterans Administration's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.

§ 18b.92 Ex parte communications.

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

§ 18b.93 Expeditious treatment.

Requests for expeditious treatment of matters pending before the reviewing authority or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties

thereto. Such communications should be in the form of a motion.

§ 18b.94 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the civil rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 18b.92. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible agency official or the Administrator with respect to securing such respondent's voluntary compliance with any requirement of Part 18 of this chapter are not prohibited.

§ 18b.95 Filing of ex parte communications.

A prohibited communication in writing received by the Administrator, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

PART 19—BOARD OF VETERANS APPEALS

Subpart A—Appeals—General

Sec.

- 19.1 General appellate jurisdiction.
- 19.2 Delegation of authority to Chairman and Vice Chairman, Board of Veterans Appeals.
- 19.3 Subject matter of appeals.
- 19.4 Disclosure of information.

Sec.

19.5 Restriction as to change in payments pending determination of administrative appeals.

Subpart B—Appeals—Rules of Practice

GENERAL

- 19.101 Rule 1; authority.
- 19.102 Rule 2; jurisdiction.
- 19.103 Rule 3; governing criteria.
- 19.104 Rule 4; finality of decisions.

ESTABLISHMENT AND COMPOSITION OF BOARD

- 19.105 Rule 5; establishment of Board.
- 19.106 Rule 6; composition of Board.
- 19.107 Rule 7; appointment, assignment and rotation of members.
- 19.108 Rule 8; function of Board.

NOTIFICATION OF APPELLATE RIGHTS

- 19.109 Rule 9; notice of right to appeal.
- 19.110 Rule 10; failure to receive notice.

APPLICATION FOR REVIEW ON APPEAL

- 19.111 Rule 11; who can file an appeal.
- 19.112 Rule 12; what constitutes an appeal.
- 19.113 Rule 13; notice of disagreement.
- 19.114 Rule 14; action by agency of original jurisdiction on notice of disagreement.
- 19.115 Rule 15; statement of the case.
- 19.116 Rule 16; substantive appeal.
- 19.117 Rule 17; contested claims.
- 19.118 Rule 18; time limit for filing.
- 19.119 Rule 19; adequacy or timely filing of appeals questioned.
- 19.120 Rule 20; place of filing.
- 19.121 Rule 21; termination of appeals.
- 19.122 Rule 22; docketing of appeals.

ADMINISTRATIVE AND MERGED APPEALS

- 19.123 Rule 23; administrative appeal.
- 19.124 Rule 24; officials authorized and time limits for filing administrative appeals.
- 19.125 Rule 25; notification of claimant.
- 19.126 Rule 26; merger of administrative appeal and claimant's appeal.
- 19.127 Rule 27; effect of decision on administrative or merged appeal.

REPRESENTATION

- 19.128 Rule 28; right to representation.
- 19.129 Rule 29; service organizations.
- 19.130 Rule 30; attorneys and agents.
- 19.131 Rule 31; other persons as representative.
- 19.132 Rule 32; general.

HEARINGS

- 19.133 Rule 33; general.
- 19.134 Rule 34; who may appear.
- 19.135 Rule 35; witnesses.

Sec.

- 19.136 Rule 36; expenses of attending hearing.
- 19.137 Rule 37; scheduling and notice of hearing.
- 19.138 Rule 38; place of hearing.
- 19.139 Rule 39; hearings in contested claims.
- 19.140 Rule 40; transcript of hearing.

EVIDENCE

- 19.141 Rule 41; submission of additional evidence in support of appeal.
- 19.142 Rule 42; action by agency of original jurisdiction on evidence.

ACTION BY THE BOARD

- 19.143 Rule 43; order of consideration.
- 19.144 Rule 44; expert medical opinions.
- 19.145 Rule 45; the decision.
- 19.146 Rule 46; remand for further development.
- 19.147 Rule 47; disqualification of members.

RECONSIDERATION OF APPELLATE DECISIONS

- 19.148 Rule 48; when accorded.
- 19.149 Rule 49; requirements in application.
- 19.150 Rule 50; evidence considered.
- 19.151 Rule 51; time limit for filing of requests.
- 19.152 Rule 52; members to consider allegations of error.

MISCELLANEOUS

- 19.153 Rule 53; finality of decisions of the agency of original jurisdiction where appeal not timely initiated and perfected.
- 19.154 Rule 54; finality of decisions of the agency of original jurisdiction affirmed on appeal.
- 19.155 Rule 55; new claim after appellate decision.
- 19.156 Rule 56; death of claimant during pendency of appeal.

AUTHORITY: 72 Stat. 1114, 1240, as amended; (38 U.S.C. 210, 4001-4009).

SOURCE: 29 FR 1464, Jan. 29, 1964, unless otherwise noted.

Subpart A—Appeals—General

§ 19.1 General appellate jurisdiction.

All questions on claims involving benefits under the laws administered by the Veterans Administration are subject to review on appeal to the Administrator of Veterans Affairs, decisions in such cases to be made by the Board of Veterans Appeals. (38 U.S.C.

4004(a)) In its decisions, the Board is bound by the regulations of the Veterans Administration, instructions of the Administrator and precedent opinions of the chief law officer. The statutory jurisdiction vests responsibility in the Board to apply and exercise all the adjudicative criteria and authority in such controlling media properly for application by the department having original adjudicative responsibility for claims for benefits.

[34 FR 8703, June 3, 1969]

§ 19.2 Delegation of authority to Chairman and Vice Chairman, Board of Veterans Appeals.

In addition to the authority vested in the Chairman and Vice Chairman, Board of Veterans Appeals, by law, Veterans' Administration regulations and manuals, authority is delegated to each as follows:

(a) To authorize assumption of appellate jurisdiction of an adjudicative determination which has not become final.

(b) To authorize administrative action on an adjudicative determination which has become final by appellate decision or failure to timely appeal.

(c) To authorize Central Office investigations of matters before the Board.

[34 FR 8703, June 3, 1969]

§ 19.3 Subject matter of appeals.

More specifically, the Board's appellate jurisdiction covers questions of entitlement to: Compensation for service-connected disabilities; pension for disability without regard to service connection; death compensation and pension; dependency and indemnity compensation; vocational rehabilitation, including need therefor; education and training allowance; subsistence allowance; educational assistance allowance and special training allowance (38 U.S.C. Chapter 35); special allowance (38 U.S.C. 412); death gratuity (38 U.S.C. 423); insurance contracts, including total disabilities income provision, reinstatements, conversions, and changes of plan, and all insurance benefits; payment or reimbursement for unauthorized medical expenses;

burial allowances; disability suffered as the result of examination, treatment, or hospitalization or vocational training; emergency officers' retirement benefits; basic eligibility to loans and unemployment compensation; adjusted compensation; waiver or recovery of overpayments; waiver of payment of loan guaranty indebtedness (38 U.S.C. 1820(a)(4)); forfeiture of rights; and all related mixed questions of fact and law, such as character and type of service, attorney fees, marital relations, dependency, validity of claims, apportionment, reduction and increase in compensation or pension benefits, and similar questions. Under 38 U.S.C. 3203(b)(3), jurisdiction extends to determinations of the Chief Attorney on the following questions: need of a dependent parent; payments from appropriated funds to a dependent parent for his or her support; use of appropriated funds for the veteran's institutional care and maintenance.

[33 FR 3176, Feb. 20, 1968]

§ 19.4 Disclosure of information.

Appeals decisions and statements of the case will not disclose matters that would be contrary to 38 U.S.C. 3301 or otherwise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant. (38 U.S.C. 4005(d)(2))

§ 19.5 Restriction as to change in payments pending determination of administrative appeals.

In the event of an administrative appeal, no change in payments based on that review or determination will be made until a decision is made by the Board of Veterans Appeals.

Subpart B—Appeals—Rules of Practice

GENERAL

§ 19.101 Rule 1; authority.

Pursuant to the authority vested in the Administrator of Veterans' Affairs (38 U.S.C. 210(c)) there are hereby issued revised rules of practice which govern proceedings in appeals to the Board of Veterans Appeals.

§ 19.102 Rule 2; jurisdiction.

(a) *Statutory.* The Board's jurisdiction extends to all questions on claims involving benefits under the laws administered by the Veterans Administration. (38 U.S.C. 4004(a))

(b) *Delegated authority.* The Board may assume jurisdiction of an unappealed issue on its own motion in a case properly before the Board, as provided in § 19.2.

§ 19.103 Rule 3; governing criteria.

In the consideration of appeals, the Board shall be bound by the regulations of the Veterans Administration, instructions of the Administrator, and precedent opinions of the General Counsel. (38 U.S.C. 4004(c))

§ 19.104 Rule 4; finality of decisions.

Decisions of the Board of Veterans Appeals are final, with the exception that claims involving insurance contracts are subject to court review. (38 U.S.C. 211(a), 784, 4004(a)) Reconsideration by the Board may be accorded under Rule 48 (§ 19.148).

ESTABLISHMENT AND COMPOSITION OF BOARD

§ 19.105 Rule 5; establishment of Board.

The Board of Veterans Appeals is established by authority of and functions pursuant to Chapter 71, Title 38, United States Code.

§ 19.106 Rule 6; composition of Board.

The Board shall consist of a Chairman, Vice Chairman, associate members, and such other professional, administrative, clerical and stenographic personnel as are found necessary. (38 U.S.C. 4001(a))

§ 19.107 Rule 7; appointment, assignment and rotation of members.

(a) *Appointment.* Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President of the United States. (38 U.S.C. 4001(b))

(b) *Assignment.* The Chairman may divide the Board into sections of three members and assign the members of the Board thereto. (38 U.S.C. 4002)

(c) *Rotation.* The Chairman may from time to time rotate the members of the sections.

(d) *Vacancy or absence.* If as a result of a vacancy, absence, or inability of an assigned member to serve, a section of the Board does not have a full complement of members, the Chairman may assign other members or direct the section to proceed without any additional assignment of members. (38 U.S.C. 4002)

§ 19.108 Rule 8; function of Board.

The principal function of the Board is to consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record and enter decisions in writing on the questions presented on appeal.

NOTIFICATION OF APPELLATE RIGHTS

§ 19.109 Rule 9; notice of right to appeal.

(a) *General.* The claimant and his representative, if any, will be informed of the right to initiate an appeal by the filing of a notice of disagreement in writing, and the time limit within which such notice must be filed. This information will be included in each notification of a determination of entitlement or nonentitlement to Veterans Administration benefits by the agency of original jurisdiction.

(b) *Administrative appeals.* In notifying a claimant of an administrative appeal, see Rule 25 (§ 19.125).

(c) *Contested claims.* In notifying a contesting claimant of appellate rights, see Rule 17 (§ 19.117).

§ 19.110 Rule 10; failure to receive notice.

While it is contemplated that the agency of original jurisdiction will give

proper notice of the right to appeal and the time limit, failure to notify the claimant of his right to such appellate review or of the time limit applicable to a notice of disagreement or substantive appeal will not extend the applicable period for taking this action.

APPLICATION FOR REVIEW ON APPEAL

§ 19.111 Rule 11; who can file an appeal.

(a) *Claimant, authorized representative, attorney, or agent.* A notice of disagreement and a substantive appeal may be filed by a claimant personally or by an accredited representative of a recognized service organization, attorney, or agent, provided a proper power of attorney or declaration of representation, as applicable, has been filed. As to filing a power of attorney or declaration of representation, see Rules 29 and 30 (§§ 19.129 and 19.130). Where contesting claimants are involved, see Rule 17 (§ 19.117).

(b) *Incompetent claimant.* If the claimant is incompetent, a notice of disagreement and a substantive appeal may be filed by the legal guardian or other proper fiduciary; or, in the absence of one of these, by the next of kin or next friend.

(c) *Attorneys and agents for fee or expenses.* An attorney or agent may file an appeal for a fee or expenses incurred in the prosecution of a claim wherein a fee or expenses has been denied or he is not satisfied with the determination as to the amount of the fee or expenses allowed.

[29 FR 1464, Jan. 29, 1964, as amended at 32 FR 4410, Mar. 23, 1967]

§ 19.112 Rule 12; what constitutes an appeal.

An appeal consists of a timely filed notice of disagreement in writing and, after a statement of the case has been furnished, a timely filed substantive appeal.

§ 19.113 Rule 13; notice of disagreement.

A written communication from a claimant or his representative expressing dissatisfaction or disagreement with an adjudicative determination of an agency of original jurisdiction will constitute a notice of disagreement.

The notice should be in terms which can be reasonably construed as evidencing a desire for review of that determination. It need not be couched in specific language. Specific allegations of error of fact or law are not required.

§ 19.114 Rule 14; action by agency of original jurisdiction on notice of disagreement.

(a) *Preliminary action.* When a notice of disagreement is timely initiated, the agency of original jurisdiction may take appropriate development and review action, not inconsistent with Title 38, United States Code, and the applicable Veterans' Administration Regulations in Title 38, Code of Federal Regulations.

(b) *Statement of the case.* If no preliminary action is required or when it is completed, the agency of original jurisdiction will prepare a statement of the case pursuant to Rule 15 (§ 19.115), if the issue or issues are not resolved by granting the benefit sought in the appeal, or through withdrawal of the notice of disagreement.

§ 19.115 Rule 15; statement of the case.

(a) *Purpose.* The purpose of the statement of the case is to give the claimant "notice" of the facts pertinent to the issue or issues and the action taken, sufficient to permit proper exercise of statutory appeal rights.

(b) *Contents.* A statement of the case shall consist of:

(1) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed;

(2) A citation or discussion of the pertinent law, Veterans Administration Regulations or other criteria, and, where applicable, the provisions of the Schedule for Rating Disabilities;

(3) The decision on the issue or issues and the reasons for the determination.

(c) *Furnishing statement of the case and information on filing substantive appeal—*(1) *Copies of statement of the case.* The statement of the case will be forwarded to the claimant at his latest

address of record and to his representative, if any.

(2) *Information on filing substantive appeal.* With the statement of the case, the appellant and his representative will be furnished information on the right and time limit to file a substantive appeal, and VA Form 1-9, Appeal to Board of Veterans Appeals. Information will also be included as follows:

(i) That the benefits sought must be clearly identified;

(ii) That the substantive appeal should set out specific allegations of error of fact or law, related insofar as possible to specific items in the statement of the case;

(iii) That the appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken;

(iv) That the agency of original jurisdiction may close the case for failure to respond to the statement of the case; and

(v) That the Board of Veterans Appeals will base its decision on the evidence and argument of record, and will not be limited to that cited in the statement of the case.

(d) *Supplemental statement of the case.* A supplemental statement of the case, so designated, will be furnished when subsequent actions are taken, evidence is received, a material defect is discovered, or for any other reasons the original statement is inadequate to effect the letter and intent of the law.

§ 19.116 Rule 16; substantive appeal.

VA Form 1-9, Appeal to Board of Veterans Appeals, adequately executed, or its equivalent in correspondence, from a claimant or his representative following the furnishing of a statement of the case will constitute a substantive appeal. The appeal should set out specific allegations of error of fact or law. Such allegations shall be construed in a liberal manner in determining their adequacy, with consideration of the technicalities involved. To the extent feasible, allegations should be related to specific items in the statement of the case.

§ 19.117 Rule 17; contested claims.

(a) *Notice of appeal rights.* In a contested claim, where one is allowed and the other is denied or the allowance of one claim would result in payment of a lesser amount to another claimant, all parties of interest will be specifically notified of the action taken and of the right and time limit for initiation of an appeal. (38 U.S.C. 4005A(a))

(b) *Who can file a notice of disagreement or substantive appeal.* In a contested claim, a notice of disagreement or substantive appeal may be filed by either party within the time limits set out in Rule 18 (§ 19.118).

(c) *Notice to parties on receipt of notice of disagreement.* Upon the filing of a notice of disagreement in a contested claim, all parties in interest and their representatives will be furnished a copy of the statement of the case in the same manner as that prescribed in Rule 15 (§ 19.115). The party in interest who filed the notice of disagreement will be duly notified of the right and time limit to file a substantive appeal and of the requirements, and furnished with VA Form 1-9, Appeal to Board of Veterans Appeals. (38 U.S.C. 4005A(b))

(d) *Notice of substance of appeal to other parties.* When a substantive appeal is filed, the substance of the appeal will be communicated to the other party or parties of interest and a period of 30 days will be allowed for filing a brief or argument in answer. (38 U.S.C. 4005A(b))

(e) *Notices to last addresses of record.* Notices in contested claims will be forwarded to the last known address of record of the parties concerned and such action will constitute sufficient evidence of notice. (38 U.S.C. 4005A)

§ 19.118 Rule 18; time limit for filing.

(a) *Notice of disagreement—(1) General.* A notice of disagreement shall be filed within 1 year from the date of mailing of notification of the initial review or determination; otherwise, that determination will become final. (38 U.S.C. 4005(b)(1))

(2) *Contested claims.* Where one claim is allowed and one denied, or the allowance of one claim would result in

payment of a lesser amount to another claimant, the notice of disagreement from the person adversely affected shall be filed within 60 days from the date of mailing of notification of the review or determination; otherwise, that determination will become final. (38 U.S.C. 4005A(a))

(b) *Substantive appeal*—(1) *General*. A substantive appeal shall be filed within 60 days from the date of mailing of the statement of the case, or within the remainder of the 1-year period from the date of mailing of notification of the review or determination being appealed, whichever is greater. (38 U.S.C. 4005(d)(3)) Where a supplemental statement of the case is furnished, a period of 30 days will be allowed for supplementing the appeal.

(2) *Contested claims*. A substantive appeal shall be filed within 30 days from the date of mailing of the statement of the case. (38 U.S.C. 4005A(b))

(c) *Extension of time*—(1) *General*. An extension of the 60-day period to file a substantive appeal or the 30-day period for supplementing an appeal following a supplemental statement of the case may be granted for good cause shown.

(2) *Contested claims*. An extension of the 30-day period to file a substantive appeal may be granted for good cause shown. In granting an extension in contested claims, consideration will be given to the interests of the other parties involved. (38 U.S.C. 4005A(b))

(3) *Additional evidence filed*. The filing of additional evidence after receipt of notice of an adverse decision shall not extend the time limit for initiating or completing an appeal from that decision.

(d) *Acceptance of postmark date*. A notice of disagreement or a substantive appeal postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed.

(e) *Computation of time limit*. In computing the time limit for filing a notice of disagreement or a substantive appeal, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeed-

ing workday will be included in the computation.

§ 19.119 Rule 19; adequacy or timely filing of appeals questioned.

The Board of Veterans Appeals will make a final determination of appellate jurisdiction (a) when the agency of original jurisdiction has a question as to whether a notice of disagreement is adequate or timely filed or a substantive appeal is timely filed, and (b) when a claimant or his representative protests an adverse determination made by the agency of original jurisdiction thereon. A determination as to the adequacy of allegations of error of fact or law in a substantive appeal will be made by the Board of Veterans Appeals.

[32 FR 4410, Mar. 23, 1967]

§ 19.120 Rule 20; place of filing.

The application for review on appeal shall be filed with the Veterans Administration office from which the claimant received notice of the decision being appealed. (38 U.S.C. 4005(b)(1))

§ 19.121 Rule 21; termination of appeals.

(a) *Closing; failure to respond to statement of case*. The agency of original jurisdiction may close a case without notice to a claimant for failure to respond to a statement of the case within the period or periods allowed. (38 U.S.C. 4005(d)(3)). However, if response is subsequently received within the 1-year appeal period (except for contested claims), the appeal will be considered to be reactivated.

(b) *Withdrawal*—(1) *Notice of disagreement*. A notice of disagreement may be withdrawn in writing at any time before a timely substantive appeal is filed or expiration of the time allowed for such action. The agency of original jurisdiction may not withdraw a notice of disagreement for failure to cooperate in reporting for an examination or in furnishing evidence requested.

(2) *Substantive appeal*. A substantive appeal may be withdrawn in writing at any time before the Board enters a decision, except where withdrawal would be detrimental to the ap-

pellant or the Government. The agency of original jurisdiction may not withdraw a substantive appeal for failure to cooperate in reporting for an examination or in furnishing evidence requested or on the basis of deficiency in allegations of error of fact or law. As to determinations on adequacy or timeliness of substantive appeals, see Rule 19 (§ 19.119).

(3) *Who may withdraw.* Withdrawal may be by the claimant or his authorized representative (person or organization) except that a representative may not withdraw either a notice or disagreement or substantive appeal filed by the claimant personally.

(c) *Dismissal.* Appeals which are insufficient in allegations of error of fact or law may be dismissed by the Board of Veterans Appeals. (38 U.S.C. 4005(d)(5))

[29 FR 1464, Jan. 29, 1964, as amended at 32 FR 4410, Mar. 23, 1967]

§ 19.122 Rule 22: docketing of appeals.

(a) *In order received.* Applications for review on appeal shall be docketed in the order in which they are received. (38 U.S.C. 4007)

(b) *Remanded cases.* Cases returned to the Board following action pursuant to a remand decision shall assume their original places on the docket.

ADMINISTRATIVE AND MERGED APPEALS

§ 19.123 Rule 23: administrative appeal.

(a) *General.* An administrative appeal from a decision of the agency of original jurisdiction may be filed by officials of the Veterans Administration authorized to do so to resolve a conflict of opinion concerning a question on a claim involving benefits under laws administered by the Veterans Administration. Such appeals may be taken from unanimous decisions denying or allowing the benefit claimed, in whole or in part, or from decisions involving dissenting opinions.

(b) *Form of appeal.* An administrative appeal is entered by memorandum entitled "Administrative Appeal" in which the issues and the bases for the appeal are set forth.

§ 19.124 Rule 24: officials authorized and time limits for filing administrative appeals.

The following officials of the Veterans Administration are authorized by the Administrator of Veterans Affairs, pursuant to authority contained in 38 U.S.C. 4006, to file administrative appeals within the time limits specified:

(a) *Central Office*—(1) *Officials.* A Chief Director or Service Director of the Department of Veterans Benefits and the Department of Medicine and Surgery, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within one year from the date of the decision, or within one year from the date of mailing notice of such decision, whichever is later.

(b) *Agencies of original jurisdiction*—(1) *Officials.* Managers, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any decision originating within their established jurisdiction.

(2) *Time limit.* The Manager or comparable official must file an administrative appeal within 6 months from the date of the decision appealed or within 6 months from the date of mailing notice of the decision, whichever is the later date. Officials below the level of Manager must do so within 60 days from such date.

§ 19.125 Rule 25: notification of claimant.

When an administrative appeal is entered, the claimant and his representative, if any, will be promptly informed concerning the question at issue, and will be allowed a period of 60 days to join in the appeal if he so desires. Information will be included relative to the effect of such action and preservation of Normal appeal rights if he does not elect to join.

§ 19.126 Rule 26: merger of administrative appeal and claimant's appeal.

If the claimant or his representative elects to join in the administrative appeal, it becomes a "merged" appeal and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument in response to notification

of the right to "join" in the administrative appeal will be construed as merging the appeal.

§ 19.127 Rule 27; effect of decision on administrative or merged appeal.

If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights. If the claimant does not merge, normal appellate rights on the same issue are preserved, and the decision is entered by another section of the Board. For disqualification of members, see Rule 47. (§ 19.147)

REPRESENTATION

§ 19.128 Rule 28; right to representation.

A claimant will be accorded full right to representation in all stages of an appeal by a recognized service organization, attorney or agent, or other person authorized to represent him before the agency of original jurisdiction. (38 U.S.C. 3401-3405; 4005(a))

§ 19.129 Rule 29; service organizations.

(a) *Designation.* The designation of a service organization will be by duly executed VA Form 23-22, Appointment of Service Organization as Claimant's Representative. (§ 14.628(a) of this chapter)

(b) *Revocation or change of power of attorney.* A claimant shall be permitted to revoke a power of attorney to a service organization whenever he so desires, irrespective of whether he concurrently designates another representative.

[29 FR 1464, Jan. 29, 1964, as amended at 32 FR 4410, Mar. 23, 1967]

§ 19.130 Rule 30; attorneys and agents.

(a) *Attorneys.* A written declaration of representation by an attorney stating that he is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and that he is authorized to represent a claimant in whose behalf he acts will, in the absence of evidence to the contrary, qualify him to represent the claimant. (§ 14.629(b) of this chapter.)

(b) *Agents—(1) Designation.* The designation of an agent will be by duly executed VA Form 2-22a, Power of Attorney, or its equivalent. (§ 14.640 of this chapter) The designation should be an individual agent, rather than a firm or partnership.

(2) *Admission to practice.* The provisions of 38 U.S.C. 3404 and § 14.629(a) of this chapter are applicable to admission of agents to practice before the Veterans Administration. Admissions to practice are under the control of the General Counsel of the Veterans Administration and any questions concerning admissions should be addressed to him.

(c) *Revocation or change of representation by an attorney or agent.* A claimant may revoke a declaration of representation by an attorney or a power of attorney to an agent at any time, but such revocation shall not be effective as to the Veterans Administration until notice of such action is received by the Veterans Administration (§ 14.644 of this chapter).

(d) *Fee or expenses.* Entitlement of an attorney or agent to a fee or expenses in connection with a claim for Veterans Administration benefits is controlled by §§ 14.650 through 14.658 of this chapter. As to an appeal to the Board of Veterans Appeals, see Rule 11 (§ 19.111).

[32 FR 4410, Mar. 23, 1967]

EDITORIAL NOTE: At 43 FR 46535, Oct 10, 1978, §§ 14.640, 14.644, 14.650, and 14.658 were removed.

§ 19.131 Rule 31; other persons as representative.

(a) *Recognition for a particular claim.* Any competent person, who is a citizen of the United States or a resident of the United States or one of the possessions, may be recognized as a representative for a particular claim, unless that person has been barred from practice before the Veterans Administration. (38 U.S.C. 3403)

(b) *Designation.* The designation must be by power of attorney which stipulates that no fee or compensation of any nature will be charged or paid for the services. The designation will be by VA Form 2-22a. Power of attorney, or its equivalent.

[29 FR 1464, Jan. 29, 1964, as amended at 32 FR 4411, Mar. 23, 1967]

§ 19.132 Rule 32; general.

(a) *One representative.* Only one attorney, agent, or service organization shall be recognized at any one time in the prosecution of a specific claim. (38 U.S.C. 4005(b)(2))

(b) *Change of status from wife to widow.* A power of attorney or designation of representation submitted by the wife of a veteran may continue in effect after she becomes a widow.

(c) *Recognition of representative after death of veteran.* A service organization, attorney, agent, or person properly designated to represent a veteran may, in the event of death of the veteran, be recognized for a reasonable period thereafter, but not as representative of a survivor claimant who has appointed another representative (§§ 1.525(d), 14.628(a) of this chapter).

[32 FR 4411, Mar. 23, 1967]

HEARINGS

§ 19.133 Rule 33; general.

(a) *Right to a hearing.* A hearing on appeal shall be granted where a claimant or his representative expresses a desire to appear in person. (38 U.S.C. 4002)

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument or testimony relevant and material to the appellate issue.

(c) *Nonadversary proceedings.* Hearings conducted by and for the Board are ex parte in nature and nonadversary. Cross-examination by parties to the hearing will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained.

§ 19.134 Rule 34; who may appear.

The claimant, his authorized representative, Members of Congress and their staff may appear and present argument in support of a claim. At the request of a claimant, a contact representative of the Veterans Administration may present the appeal at a hearing before the Board of Veterans Appeals or to a hearing agency acting for the Board.

§ 19.135 Rule 35; witnesses.

(a) *General.* The testimony of witnesses will be heard. A claimant or his representative may arrange for the voluntary appearance of such witnesses as he desires, but the Board will not require the appearance of any Veterans Administration official or other person.

(b) *Testimony under oath.* All testimony must be given under oath (affirmation if oath against religious principles), unless excused for cause. If the individual declines, he should be informed that his testimony will not bear the weight of sworn testimony. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

§ 19.136 Rule 36; expenses of attending hearing.

No expenses incurred by a claimant, his counsel, or witnesses incident to attendance at a hearing may be paid by the Government.

§ 19.137 Rule 37; scheduling and notice of hearing.

(a) *General.* A hearing on appeal will normally be set for a date after the statement of the case is furnished the claimant. To the extent that facilities permit, they are set for the convenience of claimants and their representatives, with consideration of the travel distance involved.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting the hearing will be notified of the time and place of the hearing, including notice that the Government may not assume any expense incurred by the claimant, his representative or witnesses incident to attendance at the hearing.

(c) *Extension of time.* An extension of time for appearance at a hearing may be granted, but with consideration of the interests of other parties involved in contested claims. Ordinarily, hearings will not be postponed more than 30 days.

§ 19.138 Rule 38; place of hearing.

A hearing may be held in one of the following places, at the option of the claimant:

(a) Before a section of the Board of Veterans Appeals in Washington, D.C.

(b) Before a traveling section of the Board of Veterans Appeals, if practicable.

(c) Before appropriate personnel in the Veterans Administration regional or other office nearest the claimant's residence, acting as a hearing agency for the Board of Veterans Appeals.

§ 19.139 Rule 39; hearings in contested claims.

If a hearing is scheduled for either party to a simultaneously contested claim, the Board will either accord the representative of the other contesting claimant the opportunity to be present but not participate, or will advise the other contesting claimant in writing of the substance of the argument or contentions advanced. In either event, a reasonable time will be allowed for argument or testimony in refutation, and a separate hearing for the other contesting claimant will be scheduled for that purpose, if requested.

§ 19.140 Rule 40; transcript of hearing.

The proceedings at the hearing shall be recorded and a copy of the complete transcript incorporated as a permanent part of the claims record. (38 U.S.C. 4002) A copy may be furnished without cost to the claimant or his representative upon request made at the time of or prior to the hearing; otherwise, a charge may be made in accordance with § 1.526 of this chapter.

EVIDENCE

§ 19.141 Rule 41; submission of additional evidence in support of appeal.

A claimant may submit additional evidence or information as to the availability of additional evidence after initiating an appeal. As to failure to submit evidence requested by an agency of original jurisdiction after initiation of an appeal, see Rule 21 (§ 19.121).

[32 FR 4411, Mar. 23, 1967]

§ 19.142 Rule 42; action by agency of original jurisdiction on evidence.

(a) *Evidence received prior to transfer of records to Board of Veterans Appeals.* Evidence received in the agency of original jurisdiction after the initiation of an appeal and prior to transfer of the records to the Board of Veterans Appeals, including cases in which certification may have been completed, will be referred to the rating or authorization activity for review and disposition. A supplemental statement of the case will be furnished the claimant and his representative as provided in Rule 15 (§ 19.115). Where a supplemental statement of the case is not furnished, the claimant and his representative will be notified of the action taken and the reasons for the action.

(b) *Evidence received after transfer of records to the Board of Veterans Appeals.* Additional evidence received in an agency of original jurisdiction after the records have been transferred to the Board of Veterans Appeals for appellate consideration will be forwarded to the Board if it has a direct bearing on the appellate issue or issues. The Board will then determine what procedural steps are required with respect to the new evidence.

ACTION BY THE BOARD

§ 19.143 Rule 43; order of consideration.

Applications for review on appeal shall be considered in the order in which they are entered on the docket, except that a case may be advanced on the docket for earlier consideration for sufficient cause shown. (38 U.S.C. 4007)

§ 19.144 Rule 44; expert medical opinions.

(a) *Opinion of the Chief Medical Director.* The Board may obtain an expert medical opinion from the Chief Medical Director of the Veterans Administration on medical questions involved in the consideration of an appeal, when in its judgment such medical expertise, in addition to that available from the Board's medical staff, is needed for equitable disposition of the appeal.

(b) *Opinion of independent medical experts.* When in the judgment of the Board expert medical opinion, in addition to that available within the Veterans Administration, is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more independent medical experts who are not employees of the Veterans Administration. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics or medical institutions, with which arrangements for such opinions have been made by the Administrator of Veterans Affairs. Actual selection of the expert or experts to give the opinion in an individual case will be made by an appropriate official of the institution. (38 U.S.C. 4009)

§ 19.145 Rule 45; the decision.

(a) *Decisions based on entire record.* The claimant is presumed to be in agreement with any statement of fact contained in a statement of the case to which no exception is taken. Decisions of the Board, however, shall be based on a review of the entire record. (38 U.S.C. 4005(d)(4), (5))

(b) *Disposition of issues.* The decision of the Board will dispose of each issue on appeal by allowance, denial, remand or dismissal, in whole or in part.

(c) *Format.* The decision of the Board shall be in writing and shall set forth specifically the issue or issues, findings of fact and conclusions of law separately stated and the reasons for the Board's decision. (38 U.S.C. 4004(d))

(d) *Unanimous decision.* Where the members of the section unanimously concur in the decision, it shall be the final determination of the Board. (38 U.S.C. 4003(a))

(e) *Dissent.* Where the members do not agree, the Chairman of the Board may either concur with the majority, in which event this will constitute final determination of the Board, or he may direct further consideration by two or more sections, including the section to which the case was originally assigned. Any decision which is not unanimous will require concurrence of

the Chairman of the Board. If the members are equally divided, the Chairman will participate in the determination.

§ 19.146 Rule 46; remand for further development.

(a) *General.* When, during the course of review, it is determined that further evidence or clarification of the evidence is essential for a complete and impartial appellate determination, the section of the Board shall remand the case to the agency of original jurisdiction, directing the further development to be undertaken.

(b) *Review by agency of original jurisdiction.* Where the development results in additional evidence, a supplemental statement of the case will be furnished the claimant and his representative, where indicated, and the records will again be reviewed by the agency of original jurisdiction. Review by the agency of original jurisdiction is not required where the remand is only for assembly of records previously considered by the agency of original jurisdiction.

(c) *Resubmission to Board of Veterans Appeals.* Unless the benefits appealed for are granted on review by the agency of original jurisdiction, the records will be returned to the Board of Veterans Appeals for completion of appellate review. Remanded cases will not be closed for failure to respond to the supplemental statement of the case.

§ 19.147 Rule 47; disqualification of members.

(a) *General.* A member of the Board shall disqualify himself in a hearing or decision on an appeal from a determination in which he participated or had supervisory responsibility in the agency of original jurisdiction prior to his appointment as a member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board signatory to the decision on administrative appeal will disqualify themselves from acting

on a subsequent appeal by the claimant on the same issue.

RECONSIDERATION OF APPELLATE DECISIONS

§ 19.148 Rule 48; when accorded.

Reconsideration of an appellate decision otherwise final under Rule 4 (§ 19.104) may be accorded by the Board of Veterans Appeals:

(a) Upon allegation of error of fact or law by a claimant or his representative or on the Board's own motion (38 U.S.C. 4003);

(b) Upon discovery of additional service department records (38 U.S.C. 4003, 4004(b)); or

(c) On administrative review, when authorized by the Chairman or Vice Chairman under authority delegated in § 19.2(b).

[34 FR 8703, June 3, 1969]

§ 19.149 Rule 49; requirements in application.

Application for reconsideration shall set forth clearly and specifically the alleged error(s) of fact or law in the decision of the Board or other basis for requesting reconsideration.

[34 FR 8703, June 3, 1969]

§ 19.150 Rule 50; evidence considered.

Reconsideration of an appellate decision shall be based on evidence of record at the time the decision was entered but this shall not preclude the Board from securing any needed expert medical or legal opinion.

[34 FR 8703, June 3, 1969]

§ 19.151 Rule 51; time limit for filing of requests.

A hearing for the purpose of securing reconsideration shall be requested within 1 year from the date of the mailing of notice of the original decision. A brief for that purpose may be filed at any time.

[34 FR 8703, June 3, 1969]

§ 19.152 Rule 52; members to consider allegations of error.

When a decision of the Board is to be reconsidered, the Chairman may

assign one or more additional sections to participate with the members signatory to the decision being reconsidered. Any decision which is not unanimous will require concurrence of the Chairman of the Board. If the members are equally divided, the Chairman will participate in the determination.

[32 FR 4411, Mar. 23, 1967]

MISCELLANEOUS

§ 19.153 Rule 53; finality of decisions of the agency of original jurisdiction where appeal not timely initiated and perfected.

An action or determination on a claim by the agency of original jurisdiction shall become final if an appeal is not initiated and perfected as prescribed in Rule 18 (§ 19.118), and the claim cannot thereafter be reopened or allowed, except as may be otherwise provided by Veterans Administration regulations in Title 38, Code of Federal Regulations. (38 U.S.C. 4005(c))

[34 FR 8703, June 3, 1969]

§ 19.154 Rule 54; finality of decisions of the agency of original jurisdiction affirmed on appeal.

Where an appeal is timely filed and perfected, the decision of the agency of original jurisdiction, if affirmed, does not become final until the date of the appellate decision.

§ 19.155 Rule 55; new claim after appellate decision.

Where a reopened claim is filed and evidence is submitted in support thereof which establishes a new factual basis, the reopened claim shall be adjudicated without regard to prior appellate decision on the issue. The claimant may appeal the action.

§ 19.156 Rule 56; death of claimant during pendency of appeal.

Where at the death of the veteran an appeal was pending before the Board of Veterans Appeals, the Board may complete its action without application from the survivors.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

ADMINISTRATIVE

- Sec.
21.1 Delegations of authority.
21.2 Finality of decisions.
21.3 Revision of decisions.

GENERAL

- 21.20 Vocational rehabilitation.
21.21 Nonduplication; 38 U.S.C. chapters
31, 34, and 35.
21.22 Nonduplication; Federal programs.

CLAIMS

- 21.30 Claim.
21.31 Informal claims.
21.32 Time limit.

ELIGIBILITY

- 21.40 Basic eligibility.
21.41 Extension of training.
21.42 Dates of eligibility.
21.43 Severance of service connection—re-
duction to noncompensable degree.

SUBSISTENCE ALLOWANCE

- 21.130 Subsistence allowance.
21.131 Commencing dates.
21.132 Reduction or discontinuance.
21.133 Rates.
21.134 Postrehabilitation pay.
21.135 Specialized restorative training.
21.136 Two-veteran cases; dependents.
21.137 Apportionment.
21.138 Advance payment.
21.145 Veteran-student services.

VOCATIONAL REHABILITATION TRAINING UNDER CHAPTER 31, TITLE 38, UNITED STATES CODE

- 21.200 Definition.
21.201 Types of courses.
21.202 Full-time vocational rehabilitation
training.
21.203 Less than full-time vocational reha-
bilitation training.
21.204 Duration of the course.
21.205 Adjusting the duration of the
course.
21.206 Approval of training in excess of 4
years.
21.207 Repetition of a course.

STATUS OF VETERANS PRIOR TO INDUCTION INTO TRAINING

- 21.208 Status "induction pending."
21.209 Status "training declined."

SELECTING THE TRAINING FACILITY

- Sec.
21.210 Arrangements for training on the
job.
21.211 Selecting the facility.

THE INDIVIDUAL TRAINING PROGRAM

- 21.212 Preparation and content.

INDUCTING THE VETERAN INTO TRAINING

- 21.220 Conditions for induction into train-
ing.
21.221 Memorandum agreement prior to
induction into training in a school.
21.222 Additional conditions for induction
into training on the job.
21.223 Induction into training on the job at
subminimum wage rates or training at
Federal facilities without pay.
21.224 Effective date of induction into
training.
21.225 Training of psychiatric patients
while on nonbed care status from Veter-
ans Administration hospital.
21.226 Training while a patient in a Veter-
ans Administration hospital.
21.227 Release of information.

SUPPLIES

- 21.230 Definition.
21.233 Prevention of abuse.
21.234 General limitations.
21.235 Authority to furnish supplies to vet-
erans in school training.
21.236 Authority to furnish supplies to vet-
erans in training on the job.
21.237 Furnishing supplies to veterans in
institutional on-farm training.
21.238 Furnishing magazines and other
periodicals.
21.239 Furnishing supplies to veterans pur-
suing training in the home.
21.240 Furnishing clothing.
21.241 Furnishing items susceptible of per-
sonal use.
21.242 Furnishing special equipment.
21.243 Release of and repayment for train-
ing supplies.

SUPERVISION OF THE INDIVIDUAL VETERAN

- 21.245 General.
21.250 Adjustments in the training situa-
tion.
21.252 Change of employment objective.
21.253 Additional considerations incident
to supervision.
21.254 Effect of strikes on training status.

VOCATIONAL REHABILITATION BOARD

- 21.256 Types of cases to be referred to the
Vocational Rehabilitation Board after
counseling.

Chapter I—Veterans Administration

Part 21

LEAVES OF ABSENCE

Sec.

- 21.260 Introduction.
- 21.261 Ordinary leave.
- 21.262 Additional leave under exceptional circumstances.
- 21.263 Maximum leave allowable.
- 21.264 Leave following effective date of rehabilitation.
- 21.265 Unauthorized absences.

TRAVEL OF VETERANS

- 21.266 Intraregional travel of veterans.
- 21.267 Interregional transfers for vocational rehabilitation.
- 21.268 Interregional transfers not at Government expense.
- 21.274 Authorization for travel for attendants.

TUTORING AND READER SERVICE

- 21.278 Tutoring.
- 21.279 Reader service.

TERMINATION OF TRAINING

- 21.280 Categories.
- 21.281 Status "rehabilitated."
- 21.282 Status "interrupted."
- 21.283 Status "discontinued."
- 21.284 Status "entitlement expired."

REENTRANCE INTO TRAINING

- 21.286 Reentrance after rehabilitation.
- 21.287 Reentrance after interruption.
- 21.288 Reentrance after discontinuance.

ASSISTING VETERANS IN OBTAINING EMPLOYMENT

- 21.290 Veterans Administration responsibility.
- 21.291 Assisting a disabled veteran in obtaining sheltered employment.

COUNSELING

- 21.700 Counseling disabled veterans.
- 21.701 Need for vocational rehabilitation.
- 21.705 Noncooperation of disabled veterans.
- 21.711 Redeterminations as to need.
- 21.712 Revaluation—additional counseling.
- 21.715 Seriously handicapped veterans.
- 21.716 Determining whether medical infeasibility prevented timely entrance into or completion of training.
- 21.720 Severance of service connection—reduction of disability rating.
- 21.728 Travel expenses for counseling purposes.
- 21.735 Counseling services on contract basis.

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

GENERAL

Sec.

- 21.1020 Educational assistance.
- 21.1021 Definitions.
- 21.1022 Nonduplication: 38 U.S.C. chapters 31, 34, and 35.
- 21.1025 Nonduplication: Federal programs.

CLAIMS

- 21.1030 Claims.
- 21.1031 Informal claims.
- 21.1032 Time limits.

ELIGIBILITY AND ENTITLEMENT

- 21.1040 Basic eligibility.
- 21.1041 Periods of entitlement.
- 21.1042 Ending dates of eligibility.
- 21.1043 Extended period of eligibility.
- 21.1045 Entitlement charges.

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

GENERAL

- 21.3020 Educational assistance.
- 21.3021 Definitions.
- 21.3022 Nonduplication: 38 U.S.C. chapters 31, 34, and 35.
- 21.3023 Nonduplication: pension, compensation and dependency and indemnity compensation.
- 21.3024 Nonduplication: Federal Employees' Compensation Act.
- 21.3025 Nonduplication: Federal programs.

CLAIMS

- 21.3030 Claims.
- 21.3031 Informal claims.
- 21.3032 Time limits.

ELIGIBILITY AND ENTITLEMENT

- 21.3040 Eligibility: child.
- 21.3041 Periods of eligibility: child.
- 21.3042 Service with Armed Forces.
- 21.3043 Suspension of program: child.
- 21.3044 Entitlement.
- 21.3045 Entitlement charges.
- 21.3046 Periods of eligibility: spouses and surviving spouses.

SPECIAL RESTORATIVE TRAINING

- 21.3300 Special restorative training.
- 21.3301 Need.
- 21.3302 Agreements.
- 21.3303 Extent of training.
- 21.3304 Assistance during training.
- 21.3305 Status "interrupted."
- 21.3306 Reentrance after interruption.

PAYMENTS; SPECIAL RESTORATIVE TRAINING

- 21.3330 Payments.

Part 21

Title 38—Pensions, Bonuses, and Veterans' Relief

Sec.

- 21.3331 Commencing dates.
- 21.3332 Discontinuance dates.
- 21.3333 Rates.

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

ADMINISTRATIVE

- 21.4001 Delegations of authority.
- 21.4002 Finality of decisions.
- 21.4003 Revision of decisions.
- 21.4005 Conflicting interests.
- 21.4006 False or misleading statements.
- 21.4007 Forfeiture.
- 21.4008 Prevention of overpayments.
- 21.4009 Overpayments; waiver or recovery.

GENERAL

- 21.4020 Two or more programs.
- 21.4022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.
- 21.4025 Nonduplication; Federal programs.

COUNSELING

- 21.4100 Counseling.
- 21.4101 Counseling; 38 U.S.C. chapter 34.
- 21.4102 Requirement; 38 U.S.C. chapter 35.
- 21.4103 Failure to cooperate.
- 21.4104 Travel expenses.
- 21.4105 Special training; 38 U.S.C. chapter 35.

PAYMENTS EDUCATIONAL ASSISTANCE ALLOWANCE

- 21.4130 Educational assistance allowance.
- 21.4131 Commencing dates.
- 21.4132 Waiver of time limits.
- 21.4133 Notification of withholding or discontinuance.
- 21.4134 Suspension and discontinuance.
- 21.4135 Discontinuance dates.
- 21.4136 Rates; educational assistance allowance; 38 U.S.C. chapter 34.
- 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.
- 21.4138 Certifications and release of payments.
- 21.4139 Payee.
- 21.4140 Apportionment.
- 21.4141 Offsets; 38 U.S.C. chapter 35; pension, compensation and dependency and indemnity compensation.
- 21.4145 Veteran-student services.
- 21.4146 Assignments of benefits prohibited.

STATE APPROVING AGENCIES

- 21.4150 Designation.
- 21.4151 Cooperation.
- 21.4152 Control by agencies of the United States.
- 21.4153 Reimbursement of expenses.
- 21.4154 Report of activities.

SCHOOLS

Sec.

- 21.4200 Definitions.
- 21.4201 Restrictions on enrollment; percentage of students receiving financial support.
- 21.4202 Overcharges; restrictions on enrollments.
- 21.4203 Reports by schools; requirements.
- 21.4204 Periodic certifications.
- 21.4205 Absences.
- 21.4206 Reporting fee.
- 21.4207 Failure of school to meet requirements.
- 21.4208 Central Office Education and Training Review Panel.
- 21.4209 Examination of records.

PROGRAMS OF EDUCATION

- 21.4230 Requirements.
- 21.4231 Educational plan; 38 U.S.C. chapter 35; child.
- 21.4232 Specialized vocational training; 38 U.S.C. chapter 35.
- 21.4233 Combination.
- 21.4234 Change of program.
- 21.4235 PredischARGE Education Program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; Chapter 34.
- 21.4236 Special supplemental assistance (tutorial).
- 21.4237 Special assistance for the educationally disadvantaged; chapter 35; spouse or surviving spouse.

COURSES

- 21.4250 Approval of courses.
- 21.4251 Period of operation of course.
- 21.4252 Courses precluded.
- 21.4253 Accredited courses.
- 21.4254 Nonaccredited courses.
- 21.4255 Refund policy; nonaccredited courses.
- 21.4256 Correspondence courses.
- 21.4257 Cooperative courses.
- 21.4258 Notice of approval.
- 21.4259 Suspension and disapproval.
- 21.4260 Courses in foreign countries.
- 21.4261 Apprentice courses.
- 21.4262 Other training on-the-job courses.
- 21.4263 Flight training; 38 U.S.C. chapter 34.
- 21.4264 Farm cooperative courses.
- 21.4265 Practical training approved as institutional training or on-job training.
- 21.4266 Courses offered at subsidiary branches or extensions.

ASSESSMENT AND PURSUIT OF COURSES

- 21.4270 Measurement of courses.
- 21.4271 Trade or technical; high schools.
- 21.4272 Collegiate undergraduate; credit-hour basis.
- 21.4273 Collegiate graduate.

Chapter I—Veterans Administration

Part 21

Sec.

- 21.4274 Law courses.
- 21.4275 Practical training courses; measurement.
- 21.4276 Special assistance; 38 U.S.C. chapter 35.
- 21.4277 Discontinuance; unsatisfactory progress and conduct.
- 21.4278 Reentrance after discontinuance.
- 21.4279 Combination correspondence-residence program.
- 21.4280 Independent study leading to a standard college degree.

Subpart E—Nondiscrimination in Vocational Rehabilitation and Education Programs—Title VI, Civil Rights Act of 1964

- 21.4300 Civil rights assurances; Title VI, Pub. L. 88-352.
- 21.4301 Institutions of higher learning; elementary and secondary schools; medical institutions.
- 21.4302 Proprietary vocational schools and training establishments.
- 21.4303 State approving agencies.
- 21.4304 Assurance of compliance received—institutions of higher learning; elementary and secondary schools; medical facilities.
- 21.4305 Noncompliance; complaints; initial action.
- 21.4306 Payments after final agency action.
- 21.4307 Posttermination compliance.

Subpart F—Education Loans

- 21.4500 Definitions.
- 21.4501 Eligibility.
- 21.4502 Applications.
- 21.4503 Determination of loan amount.
- 21.4504 Promissory note.
- 21.4505 Check delivery.
- 21.4506 Education loan forgiveness through accelerated payment of educational assistance allowance.
- 21.4507 Advertising.

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

ADMINISTRATIVE

- 21.5001 Administration of benefits program; chapter 32.

GENERAL

- 21.5020 Post-Vietnam era veterans' educational assistance.
- 21.5021 Definitions.
- 21.5022 Eligibility under more than one program.
- 21.5023 Nonduplication; Federal programs.

CLAIMS AND APPLICATIONS

Sec.

- 21.5030 Applications, claims, informal claims, and time limits.

ELIGIBILITY

- 21.5040 Basic eligibility.
- 21.5041 Periods of entitlement.

PARTICIPATION

- 21.5050 Application requirements for participation.
- 21.5052 Contribution requirements.
- 21.5054 Dates of participation.
- 21.5058 Resumption of participation.
- 21.5060 Disenrollment.
- 21.5062 Date of disenrollment.
- 21.5064 Refund upon disenrollment.
- 21.5065 Refunds without disenrollment.
- 21.5066 Suspension of participation.
- 21.5067 Death of participant.

ENTITLEMENT

- 21.5070 Entitlement.
- 21.5071 Months of entitlement allowed.
- 21.5072 Entitlement charge.
- 21.5074 Excessive absences.
- 21.5076 Entitlement charge; overpayment cases.
- 21.5078 Interruption to conserve entitlement.

COUNSELING

- 21.5100 Counseling.
- 21.5101 Approval of program changes and reentrances.
- 21.5103 Travel expenses.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

- 21.5130 Payments; educational assistance allowance.
- 21.5131 Educational assistance allowance.
- 21.5132 Criteria used in determining benefit payments.
- 21.5134 Restrictions on paying benefits to servicepersons.
- 21.5135 Advance payments.
- 21.5136 Benefit payments; predischARGE education program.
- 21.5138 Computation of benefit payments and monthly rates.

STATE APPROVING AGENCIES

- 21.5150 State approving agencies.

SCHOOLS

- 21.5200 Schools.

PROGRAMS OF EDUCATION

- 21.5230 Programs of education.
- 21.5231 Combination.
- 21.5232 Change of program.

§ 21.1

Title 38—Pensions, Bonuses, and Veterans' Relief

Sec.

21.5233 Predischarge education program (PREP); chapter 32.

COURSES

21.5250 Courses.

ASSESSMENT AND PURSUIT OF COURSE

21.5270 Assessment and pursuit of course.

NONDISCRIMINATION IN VOCATIONAL REHABILITATION AND EDUCATIONAL PROGRAMS—TITLE VI, CIVIL RIGHTS ACT OF 1964

21.5300 Civil rights.

EDUCATION LOANS

21.5500 Education loans.

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

AUTHORITY: 72 Stat. 1114, 1171, as amended; (38 U.S.C. 210, 1501-1511) unless otherwise noted.

ADMINISTRATIVE

§ 21.1 Delegations of authority.

Authority is delegated to the Chief Benefits Director, and supervisory or adjudicative personnel within the jurisdiction of the Education and Rehabilitation Service designated by him to make findings and decisions under 38 U.S.C. Chapter 31 and the applicable regulations, precedents and instructions, as to vocational rehabilitation services for disabled veterans.

[37 FR 10442, May 23, 1972]

CROSS REFERENCE: *Contracts—authority.* See 41 CFR 8-75.201-13.

§ 21.2 Finality of decisions.

(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Veterans Administration as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 21.3. (See §§ 19.153 and 19.154 of this chapter.)

(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for vocational rehabilitation

or payment of subsistence allowance, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

[30 FR 11319, Sept. 3, 1965]

§ 21.3 Revision of decisions.

The revision of a decision on which an action was predicated will be subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter;

(b) Difference of opinion, § 3.105(b) of this chapter;

(c) Character of discharge, § 3.105(c) of this chapter;

(d) Severance of service connection, § 3.105(d) of this chapter;

(e) Reduction to less than compensable evaluation, § 3.105(e) of this chapter.

[30 FR 11319, Sept. 3, 1965]

CROSS REFERENCES: *Liberalizing laws.* See § 21.131.

Error. See § 21.132.

GENERAL

§ 21.20 Vocational rehabilitation.

(a) *Definition.* The term "vocational rehabilitation" means training (including educational and vocational counseling and other necessary incidental services) for the purpose of restoring employability, to the extent consistent with the degree of disablement, lost by virtue of a handicap due to service-connected disability. (38 U.S.C. 1501(2).) See § 21.200.

(b) *Four-year limitation.* No full-time course of vocational rehabilitation may exceed 4 years unless it is determined that a longer period is required under the circumstances outlined in § 21.206. For a veteran in part-time institutional training, references to the 4-year limitation contained in this subpart will mean the equivalent in part-time training of 48 months in full-time training. (38 U.S.C. 1502(b).)

(c) *Training in a foreign country.* (1) Vocational rehabilitation may not be afforded to a veteran outside of a State (see § 3.1(i) of this chapter) based on post-World War II service if

the veteran was not a citizen of the United States when he rendered such service (38 U.S.C. 1502(c)).

(2) Vocational training in a foreign country other than the Republic of the Philippines may not be afforded to a veteran who was a citizen of the United States when he rendered such service unless adequate training for the selected objective is not available in the United States or its possessions, and then only if training is pursued under the direct supervision of a representative of the Veterans Administration.

[30 FR 11319, Sept. 3, 1965, as amended at 31 FR 6771, May 6, 1966; 33 FR 12315, Aug. 31, 1968]

§ 21.21 Nonduplication; 38 U.S.C. chapters 31, 34 and 35.

A person who is eligible for vocational rehabilitation training under chapter 31 and is also eligible for educational assistance under chapters 34 or 35 must elect which benefit he will receive. The election is subject to the conditions specified in § 21.4022.

[34 FR 840, Jan. 18, 1969]

§ 21.22 Nonduplication; Federal programs.

Neither vocational rehabilitation training nor subsistence allowance may be authorized for any period during which the veteran is enrolled in and pursuing a course of education or training under a Federal program which is subject to the restrictions contained in § 21.4025.

[31 FR 6771, May 6, 1966]

CLAIMS

SOURCE: Sections 21.30 to 21.32 appear at 30 FR 11319, Sept. 3, 1965, unless otherwise noted.

§ 21.30 Claim.

A specific claim in the form prescribed by the Administrator must be filed in order for vocational rehabilitation training (and subsistence allowance) to be afforded a veteran. (38 U.S.C. 3001(a))

§ 21.31 Informal claims.

(a) *Received by Veterans Administration.* Any communication or action indicating an intent to apply for vocational

rehabilitation, from a veteran, his duly authorized representative, or a Member of Congress may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the veteran for execution. If received within 1 year from the date it was sent to the veteran, or before cessation of the course, whichever is earlier, it will be considered filed as of the date of receipt of the informal claim.

(b) *Received by school.* The act of enrolling in an approved institution does not, in itself, constitute an informal application. The date a formal or informal application was received by the institution may, however, be accepted as the date of receipt in the Veterans Administration if it is forwarded to and received by the Veterans Administration within 90 days from the date of commencement of education and training.

§ 21.32 Time limit.

(a) *Time limit for filing evidence.* The provisions of this paragraph are applicable to original applications, formal or informal, and to applications for increased benefits by reason of the existence of a dependent.

(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application.

(2) If the evidence is not received within 1 year from the date of such notification, benefits may not be paid by reason of that application.

(b) *Failure to furnish claim form or notice of time limit.* Failure to furnish a potential claimant any form or information concerning the right to file claim, or to furnish notice of the time limit for the filing of a claim or submission of evidence will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

CROSS REFERENCES: *Computation of time limit.* See § 3.110 of this chapter.

Notice to claimants. See § 3.103 of this chapter.

ELIGIBILITY

§ 21.40 Basic eligibility.

To establish eligibility for vocational rehabilitation under 38 U.S.C. ch. 31, the conditions of this section must be met:

(a) *Service.* Active service in the military, naval, or air service of the United States within the dates set forth in § 21.42.

(b) *Discharge or release.* (1) The veteran must have received an unconditional discharge or release from active service under conditions other than dishonorable.

(2) The Veterans Administration will consider that the veteran has received an unconditional discharge or release if—

(i) The veteran was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met. See also § 3.12 of this chapter on character of discharge. (38 U.S.C. 101)

(c) *Service-connected disability.* A service-connected disability which is, or but for the receipt of retirement pay would be, compensable under 38 U.S.C. ch. 11, based on service within the dates set forth in § 21.42.

(d) *Need.* Need for vocational rehabilitation as determined under § 21.701.

[30 FR 11320, Sept. 3, 1965, as amended at 35 FR 16317, Oct. 17, 1970; 45 FR 59312, Sept. 9, 1980]

CROSS REFERENCES: *Duty periods.* See § 3.6 of this chapter.

Persons included. See § 3.7 of this chapter.

Philippine and insular forces. See § 3.8 of this chapter.

§ 21.41 Extension of training.

(a) *General.* A veteran may be provided training beyond his or her basic termination date in accordance with dates set forth in § 21.42 when he or she was prevented from timely entering, or having entered, from completing vocational rehabilitation for one of the following reasons:

(1) *Physical or mental condition prevented timely entrance.* His or her physical or mental condition was such as to make training medically infeasible

during all or any part of the critical period, as set forth in § 21.42, for qualifying to enter training in order to permit pursuit of a program during the 4-year period immediately preceding his or her basic termination date.

(2) *Physical or mental condition prevented completion.* He or she timely entered training but was prevented from completing his or her planned course because of physical or mental condition and through no fault of his or her own.

(3) *Discharge.* Discharge from service was such as to meet the eligibility requirements for vocational rehabilitation for the first time on or subsequent to the beginning date of the applicable critical period as set forth in § 21.42.

(4) *Service-connected disability.* He or she first established the existence of a service-connected compensable disability on or subsequent to the beginning date of the applicable critical period as set forth in § 21.42.

(5) *Increase in degree of disablement.* Subsequent to the beginning day of his or her critical period he or she has established the existence of an increase in the degree of disabling effect of service-connected disability which warrants a current finding that need for vocational rehabilitation exists and is attributable to the change.

(b) *Seriously disabled (including blinded) veterans.* A veteran who is blinded or otherwise seriously disabled as a result of service-connected disability may be provided training beyond the termination date otherwise applicable if:

(1) He or she has not previously been rehabilitated, or

(2) His or her disability has worsened, or he or she has developed a secondary service-connected condition resulting from service-connected disability after he or she was declared rehabilitated, to the extent that he or she is now precluded from performing the duties of the occupation for which previously trained.

(3) However, a counseling psychologist within the Veterans Services Division must determine that training is necessary based upon the veteran's disability and need for vocational rehabilitation.

(c) *Determination of serious disability.* For purposes of paragraph (b) of this section, serious disability includes:

(1) Service-connected blindness defined as visual acuity no better than 20/200 in the better eye after correction, or a field of vision restricted to an angle of 15 degrees or less.

(2) Service-connected disability evaluated singly or in combination at 50 percent, or more, except convalescent ratings, prestabilization ratings, and ratings based on hospitalization.

(3) Service-connected disability evaluated singly or in combination at 30 percent or 40 percent if, because of such disability, the veteran is unable to get and/or hold competitive employment. Service-connected disabilities evaluated singly or in combination at less than 30 percent do not constitute serious disability.

[43 FR 35281, Aug. 9, 1978]

CROSS REFERENCE: Need for vocational rehabilitation. See § 21.701.

§ 21.42 Dates of eligibility.

§ 21.42

Basic dates		Extension under § 21.41(a) (1) through (5)				Training under § 21.41(b) (6)
(1)	(2)	(3)		(4)	(5)	
Date disability incurred.	Date of discharge ¹	Basic termination date (Last pay date).	If the basic termination date is less than 4 years away or has already passed, consideration should first be given for the 4-year extension and § 21.41(a) (1) through (5). See columns (4) and (5).	Beginning and ending date of critical ² period § 21.41(a) (1) through (5).	Extended termination date under § 21.41(a) (1) through (5). (Last pay date).	If veteran does not have sufficient training time for completion of rehabilitation by his or her basic termination date or by any applicable extension under § 21.41(a) (1) through (5) and is seriously disabled or blinded as provided in § 21.41 (b) and (c), training after the otherwise applicable termination date shall be provided, or such periods as determined necessary based upon the disability and need for training.
(a) 9-16-40 to 7-25-47	After 9-15-40.....	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date ³ .	
(b) 7-26-47 to 6-26-50.	Before 10-15-62.....	10-14-71.....		7-14-67 to 10-14-67.....	10-14-75.....	
	After 10-14-62.....	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date ³ .	
(c) 6-27-50 to 1-31-55.	After 6-26-50.....	do ⁴		do.....	do ⁴	
(d) After 1-31-55	Before 10-15-62.....	10-14-71.....		7-14-67 to 10-14-67.....	10-14-75.....	
	After 10-14-62.....	9 years after discharge date.		4 years and 9 months to 5 years after discharge date.	13 years after discharge date.	

¹Date of discharge refers to the first unconditional discharge or release under conditions other than dishonorable following the period of service in which the disability occurred. If the unconditional discharge or release was under dishonorable conditions, date of discharge refers to the last date of the satisfactorily completed period of obligated active service during which the disability occurred.

²Critical period is the 90-day period immediately preceding the date falling exactly 4 years prior to the veteran's basic termination date. It is a 90-day period which permits the veteran time to complete counseling and select an objective which can be reached within the 4-year period immediately following.

³When extended termination date under § 21.41(a) (1) through (5) for these service dates has expired, further extension may only be granted if the veteran qualifies under § 21.41 (b) and (c).

⁴In no case was basic termination date (last pay date) earlier than 8-19-63 or extended termination date earlier than 8-19-67.

[43 FR 35282, Aug. 9, 1978, as amended at 45 FR 59312, Sept. 9, 1980]

Title 38—Pensions, Bonuses, and Veterans' Relief

BEST DOCUMENT AVAILABLE

Chapter I—Veterans Administration

§ 21.130

§ 21.13 Severance of service connection— reduction to noncompensable degree.

When a rating action is taken which proposes severance of service connection or reduction to a noncompensable evaluation the provisions of the following paragraphs will govern with respect to the veteran's entitlement to vocational rehabilitation under chapter 31:

(a) *Applicant.* If the veteran is an applicant for vocational rehabilitation when the proposed rating action is taken, all processes respecting determination of entitlement, need or induction into training shall be immediately suspended. In no event shall any veteran be inducted into training during the interim periods provided in § 3.105 (d) and (e) of this chapter. If the proposed rating action becomes final, the application will be denied. See also § 21.720 as to counseling.

(b) *Reduction while in training.* If the proposed rating action is taken while the veteran is in training and results in a reduction to a noncompensable rating of his or her disability, the veteran may be retained in training until the attainment of his or her objective, except if "discontinued" under § 21.283 he or she may not reenter. See also § 21.252.

(c) *Severance while in training.* If the proposed rating action is taken while the veteran is in training and results in severance of the service connection of his or her disability, training will be terminated effective as of the last day of the month in which severance of service connection becomes final. See also § 21.132(h).

[30 FR 11320, Sept. 3, 1965, as amended at 40 FR 42878, Sept. 17, 1975]

SUBSISTENCE ALLOWANCE

§ 21.130 Subsistence allowance.

(a) *Payments.* Each veteran under chapter 31 will be paid a subsistence allowance at the rates specified in § 21.133. Final payment may be withheld until proof of continued enrollment is received and the account adjusted. Allowance will be paid while the veteran is in training status, in-

cluding any period during which he or she is on authorized leave.

(1) A veteran is in training status during:

(i) Periods when he or she is in attendance; this includes weekends and legal holidays (or customary vacation periods connected therewith) and, as determined by the Director of the VA field station of jurisdiction, periods when the schools are closed temporarily under an established policy based upon an Executive order of the President or due to an emergency situation.

(a) If the emergency school closing is due to a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service will decide if veterans enrolled in the school may still be considered to be in training status. His or her decision will be based on a full assessment of the strike situation. A veteran will not be considered to be in training status if in his or her judgment the school closing will not be temporary. (38 U.S.C. 1780(a))

(b) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a))

(ii) Periods between consecutive terms within an enrollment period that do not exceed 1 full calendar month.

(iii) Periods between consecutive school terms when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and

§ 21.131

Title 38—Pensions, Bonuses, and Veterans' Relief

pursuing a similar course at the second institution, provided the period does not exceed 30 days.

(iv) Periods between a semester, term or quarter where the educational institution certifies the enrollment of the veteran on an individual semester, term or quarter basis, if the interval between such periods does not exceed 1 full calendar month.

(2) A veteran who is on approved leave will continue to be paid subsistence allowance even though he or she is hospitalized; receiving drill pay, flight pay or commuted rations as a member of a Reserve force; or while not on active duty, is receiving service department retirement or retainer pay. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(b) *Restrictions.* A person in training under chapter 31 will not be paid subsistence allowance when:

(1) He or she is hospitalized pending final discharge from active service.

(2) He or she is receiving Veterans Administration hospital or domiciliary care following discharge from service, except as provided in paragraph (a)(2) of this section. (The veteran is not precluded from receiving subsistence allowance if as a part of his or her training he or she is receiving certain assistance in the day clinic of the hospital but is providing his or her own room and board, either at home or otherwise.)

[43 FR 35282, Aug. 9, 1978, as amended at 44 FR 25648, May 2, 1979]

CROSS REFERENCES: Relationship. See §§ 3.50 through 3.59 of this chapter.

Evidence requirements. See §§ 3.205 through 3.210 of this chapter.

§ 21.131 Commencing dates.

The commencing date of an award or increased award of subsistence allowance will be determined under this section, but will not be authorized for any period prior to the earliest date for which disability compensation is payable, or would be payable except for the receipt of retirement pay.

(a) *Entrance or reentrance into training.* Except as provided in § 21.224, the date of entrance or reentrance.

(b) *Increase for dependent.* Latest of the following dates:

(1) Date of claim: This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(ii) Date notice is received of dependent's existence, if evidence is received within 1 year of the Veterans Administration's request.

(2) Date dependency arises.

(3) Date the law permits benefits for dependents generally.

(4) Date of entrance or reentrance into the program. (38 U.S.C. 3010 (f), (n); Pub. L. 91-584, 84 Stat. 1575)

CROSS REFERENCE: See § 3.667 of this chapter as to effective dates with regard to children 18 years of age and older who are attending school.

(c) *Correction of military records.* Where eligibility of a veteran arises as the result of correction of military records under 10 U.S.C. 1552 or a change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, the commencing date of subsistence allowance which is otherwise payable will be the latest of the following dates:

(1) Date the application for change, correction or modification was filed with the service department, in either an original or a disallowed Veterans Administration application;

(2) Date of receipt of Veterans Administration application; or

(3) One year prior to reopening of disallowed claim.

(d) *Liberalizing laws and Veterans Administration issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

[30 FR 11321, Sept. 3, 1965, as amended at 31 FR 6771, May 6, 1966; 33 FR 536, Jan. 16, 1968; 36 FR 2507, Feb. 5, 1971; 38 FR 14930, June 7, 1973; 43 FR 35283, Aug. 9, 1978]

§ 21.132 Reduction or discontinuance.

The effective date of reduction or discontinuance of subsistence allowance will be the earliest of the date specified in these paragraphs. Where an award is reduced, the reduced rate

BEST DOCUMENT AVAILABLE

Chapter I—Veterans Administration

§ 21.132

will be effective the day following the date of discontinuance of the greater benefit.

(a) *Death of veteran.* Date of death, if death occurs while in school attendance or authorized leave status.

(b) *Death of dependent.* Last day of attendance or last day of approved leave status (whichever is applicable), or last day of the calendar year in which death occurred, whichever is earlier.

(c) *Divorce.* Last day of attendance or last day of approved leave status (whichever is applicable), or last day of the calendar year in which the divorce occurred, whichever is earlier.

(d) *Child—(1) Marriage.* Last day of attendance or last day of approved leave status (whichever is applicable), or last day of the calendar year in which the marriage occurred, whichever is earlier.

(2) *Age 18.* Day preceding 18th birthday.

(3) *School attendance.* Last day of month in which school attendance ceased or day preceding 23d birthday, whichever is earlier.

(4) *Helplessness ceased.* Last day of month following 60 days after notice to the payee that helplessness has ceased.

(e) *"Interrupted", "discontinued", or "rehabilitated".*

(1) *Interrupted and rehabilitated.* Last day of attendance or last day of approved leave status, whichever is applicable.

(2) *Discontinued.* Last date of attendance or leave status whichever is applicable, except as follows:

(i) If the veteran is placed in discontinued status following withdrawal from all courses with nonpunitive grades or following completion of all courses with nonpunitive grades, and mitigating circumstances are not found by the Vocational Rehabilitation Specialist, benefits will be terminated effective the first date of the term or December 1, 1976, whichever is later.

(ii) If the veteran is placed in discontinued status following a term in which grades received include both those which count in grade point average and nonpunitive grades, and mitigating circumstances are not found:

Subsistence allowance for courses in which nonpunitive grades were received will be terminated effective the first date of the term or December 1, 1976, whichever is later. Subsistence allowance for courses in which grades which count in grade point average were received will be terminated last date of attendance or leave status, whichever is applicable. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(f) *Wages or salary received in apprenticeship or on-the-job training.* (1) First adjustment, effective the first day of the second month following the month in which veteran entered training.

(2) Subsequent adjustments, effective the first day of the second month following the month in which wages or salary justifying adjustment were paid.

(g) *Reduction in rate of pursuit of course.* End of month in which reduction occurs, except that if the rate of pursuit is reduced as a result of the veteran's withdrawal from a course or courses with nonpunitive grade(s) or as a result of the completion of a course or courses with nonpunitive grade(s) (§ 21.4200(j)), benefits will be reduced as follows:

(1) If the Vocational Rehabilitation Specialist determines that there are mitigating circumstances:

(i) *Withdrawal with nonpunitive grades:* The end of the month or the end of the term in which withdrawal occurs, whichever is the earlier, unless the reduction occurs at the beginning of the term, in which case benefits will be reduced the first date of the term in which the withdrawal occurs or December 1, 1976, whichever is the later.

(ii) *Completion with nonpunitive grades:* No reduction required.

(2) If the Vocational Rehabilitation Specialist determines there are no mitigating circumstances reduction of benefits is effective the first date of the term in which the withdrawal or completion with nonpunitive grades occurs or December 1, 1976, whichever is the later. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(h) *Severance of service connection.* Last day of month in which severance becomes final.

§ 21.133

Title 38—Pensions, Bonuses, and Veterans' Relief

(i) *Fraud.* Beginning date of award or day preceding date of fraudulent act, whichever is later.

(j) *Error—payee's or administrative.* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Except as provided in paragraph (h) of this section, date of last payment on an erroneous award based solely on administrative error or error in judgment.

(k) *Treasonable acts or subversive activities.* Beginning date of award or

day preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

[30 FR 11321, Sept. 3, 1965, as amended at 30 FR 14649, Nov. 25, 1965; 33 FR 12316, Aug. 31, 1968; 37 FR 4912, Mar. 7, 1972; 38 FR 14930, June 7, 1973; 40 FR 31756, July 29, 1975; 43 FR 35283, Aug. 9, 1978]

§ 21.133 Rates.

Subsistence allowance is payable at the following monthly rates effective October 1, 1977.

Type of training	Monthly rate of subsistence allowance			
	No dependents	1 dependent	2 dependents	Each additional dependent
Institutional: Full-time.....	\$241	\$298	\$351	\$26
¾ time.....	181	224	263	19
½ time.....	120	149	176	13
Sheltered workshop, training in the home, independent instructor (full time only).....	241	298	351	26
Farm cooperative, apprentice or other on job (OJT) ¹ (full time only).....	210	254	293	19
Combination (institutional and OJT) (full time only):				
Institutional ¾ time or more.....	241	298	351	26
Institutional less than ¾ time.....	210	254	293	19
Cooperative (full time only):				
Institutional full time.....	241	298	351	26
Business/industry full time.....	210	254	293	19

¹For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62493, Oct. 31, 1979]

§ 21.134 Postrehabilitation pay.

Upon being rehabilitated, except under conditions stated in § 21.281 (b) and (c), a lump-sum payment of 2 months' postrehabilitation pay will be authorized as follows, based upon the rate of subsistence allowance the veteran was entitled to at the time his or her employability is determined:

(a) *Institutional full-time.* The lump-sum payment will be twice the full-time monthly rate, including any additional amounts for dependents. For cooperative training, the postrehabilitation pay will be computed at the institutional rate.

(b) *Institutional part-time.* The lump-sum payment will be twice the three-quarter or half-time monthly rate, whichever is applicable.

(c) *Farm cooperative, apprentice, or other on-job.* The lump-sum payment will be twice the full-time monthly rate authorized for this kind of training including any additional amounts for dependents. The full-time rate will be the basis for payment without regard to the fact that the veteran may have been authorized less than the maximum subsistence allowance payable because of wages earned while pursuing on-the-job training.

(d) *Subsequent payments.* Where, following a determination of employability and payment of the 2 months' postrehabilitation pay, a veteran is reinducted for additional training, payment of the 2 months' postrehabilitation pay will again be authorized

upon a subsequent determination of employability.

[33 FR 12316, Aug. 31, 1968, as amended at 40 FR 31756, July 29, 1975; 43 FR 35283, Aug. 9, 1978]

§ 21.135 Specialized restorative training.

When specialized restorative training is prescribed for the sole purpose of enabling the veteran to retain employment in the occupation in which he or she is currently employed, the rate of subsistence allowance authorized may not exceed the difference between the veteran's current rate of pay and the rate which will be paid him or her upon completion of the prescribed course of specialized restorative training.

[40 FR 31756, July 29, 1975]

§ 21.136 Two-veteran cases; dependents.

The payment of additional subsistence allowance under § 21.133 to a veteran for a spouse who is also a veteran and for a child will not bar the payment of additional subsistence or educational assistance allowance under § 21.4136 to the spouse for his or her spouse and the same child.

[40 FR 31756, July 29, 1975]

§ 21.137 Apportionment.

(a) *General.* Where in order, subsistence allowance payable on account of training will be apportioned in accordance with § 3.451 of this chapter, subject to the limitations of § 3.458 of this chapter.

(b) *Effective date.* The effective date of apportionment will be as prescribed in § 3.400(e) of this chapter.

(c) *Child adopted out of family.* Where evidence establishes that a veteran is the natural parent of a child or children legally adopted outside of the veteran's family, only such additional amount of subsistence allowance on account of the existence of such child or children will be apportioned in favor of the child or children. The veteran is not entitled in his or her own right to whatever additional amount of subsistence allowance is payable because of the existence of such child unless the veteran is contributing to the child's support.

[30 FR 11321, Sept. 3, 1965, as amended at 40 FR 31756, July 29, 1975]

§ 21.138 Advance payment.

(a) *Eligibility.* Subsistence allowance at the rates specified in § 21.133 shall be paid to an eligible veteran enrolled in an approved educational institution on a half-time or more basis.

(b) *Payment.* The amount of the payment is not to exceed the subsistence allowance for the month or fraction thereof in which the course will commence plus the subsistence allowance for the following month. Upon application and completion of arrangements for enrollment and if there is no evidence in the veteran's file showing that he or she is not eligible for such an advance, the check, made payable to the veteran, shall be mailed to the institution for delivery to the veteran upon registration. No delivery shall be made more than 30 days in advance of commencement of his or her program. Subsequent payments shall be made each month in advance subject to information furnished by the Veterans Administration staff or the training facility. Final payment may be withheld until certification is received that the veteran pursued his or her course and any necessary adjustments made.

(c) *Certification.* Payment will be authorized upon receipt of the proper certification which contains the following information:

(1) The veteran is eligible for educational benefits;

(2) He or she has been accepted by the institution or is eligible to continue his or her training there;

(3) He or she has notified the institution of his or her intention to attend that institution or to re-enroll in it;

(4) The number of semester or clock hours to be pursued by the veteran; and

(5) The beginning and ending dates of the enrollment period.

(d) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution

at which the veteran is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of 38 U.S.C. 1780(d)(5) (B) and (C) and (6) pertaining to receipt, delivery, or return of advance checks and certifications of delivery and enrollment.

(e) *Time of payment.* Advance payment will only be authorized, at the beginning of an ordinary school year or at the beginning of any other enrollment period which begins after a break in enrollment of 1 full calendar month or longer. Furthermore, on and after June 1, 1977, all other payments shall be made at the end of the month in which the training for which payment is made shall have occurred. These exceptions are required by the provisions of Pub. L. 94-502, 90 Stat. 2383. See § 21.130.

[38 FR 14930, June 7, 1973, as amended at 40 FR 31756, July 29, 1975; 43 FR 35283, Aug. 9, 1978]

§ 21.145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training, he or she will be

permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

(b) *Selection criteria.* Whenever feasible, veteran-students with disabilities rated at 30 percent or more are to be given priority in selection for this allowance. In addition the following selection criteria should be considered:

- (1) Need of the veteran to augment his or her subsistence allowance;
- (2) Availability to the veteran of transportation to the place where his or her services are to be performed;
- (3) Motivation of the veteran; and
- (4) Compatibility of the work assignment to the veteran's physical condition.

(c) *Utilization.* Veteran-student services may be utilized in connection with:

- (1) Outreach services program as carried out under the supervision of a Veterans Administration employee;
- (2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Veterans Administration;
- (3) Hospital and domiciliary care and medical treatment at Veterans Administration facilities; and
- (4) Any other appropriate activity of the Veterans Administration.

(d) *Survey.* A survey of each regional office will be conducted annually to determine the number of veteran-students whose services can be effectively utilized.

[38 FR 12213, May 10, 1973, as amended at 40 FR 31756, July 29, 1975; 44 FR 62493, Oct. 31, 1979]

VOCATIONAL REHABILITATION TRAINING
UNDER CHAPTER 31, TITLE 38, UNITED
STATES CODE

§ 21.200 Definition.

A course of vocational rehabilitation is one designed to make a veteran satisfactorily employable in his selected occupation. It may consist entirely of vocational training. It may include education needed to undertake or to supplement the vocational course. It may include or, in some instances, consist of training to correct or remove the handicap of the disability, as for example: training for the correction of speech defects, lip reading for the deafened veteran, et cetera.

[30 FR 11322, Sept. 3, 1965]

§ 21.201 Types of courses.

In prescribing the course for a particular veteran, that type or combination of types will be selected which will make the veteran most satisfactorily employable in his or her selected occupation. The types of courses of vocational rehabilitation are:

(a) *School course.* A course pursued at an institution or a part thereof devoted exclusively to educational or training purposes. This includes courses offered by a part of a business or industrial establishment devoted exclusively to educational or training purposes as distinguished from the regular production activities. Also included are medical or osteopathic internship courses when accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association, or by the American Osteopathic Association.

(b) *Training-on-the-job course.* A course which is pursued at an establishment devoted primarily to producing goods or services rather than to giving courses of instruction. The training is pursued toward a specified occupational objective. The learning method is primarily by being told and shown and by observing and assisting. There is a gradual increase in productive work with increasing independ-

ence of instruction as the course progresses.

(c) *Combination course.* A course which is a combination of training on the job and training in school. This may be a course that is pursued concurrently in school and on the job; it may be pursued primarily on the job with some related instruction in school; it may be pursued in school as a preparatory course to entering on-the-job training; or it may be pursued first on the job and finally in school. One type of combination course is a cooperative course which is pursued primarily at school. The objective commonly is attainable through school instruction alone, and the training-on-job portion is supplemental to the school course. Characteristic cooperative courses are usually on the college and junior college level and in some technical schools. Commonly the student devotes at least one-half of the total time to the school portion, and the periods in school and training on the job are relatively long, such as a full term in school and an alternate term on the job. Some combination courses not considered cooperative courses for purpose of vocational rehabilitation are arrangements where part of each day is spent in school and part on the job, or a full day is spent on the job and part time is spent in school one or more times a week.

(d) *Specialized restorative training course.* A course which is designed to overcome or minimize the handicap of a disability which interferes with a veteran's ability to undertake vocational training or employment. Representative of specialized restorative training courses are courses in language training, speech and voice correction, speech retention or voice retention, speech (lip) reading, auditory training, braille reading and writing, training in ambulation, one-hand type-writing, nondominant-hand writing, work adjustment training and personal adjustment training. Specialized restorative training may be provided under Chapter 31 when it is determined that such services are not readily available through the Medical Division.

(1) Specialized restorative training ordinarily will be prescribed as a part

of the course of vocational rehabilitation and pursued concurrently with the vocational training.

(2) Specialized restorative training may be furnished as a preliminary part of a course of vocational rehabilitation when needed to assist the veteran in selecting a suitable employment objective or undertaking a course of vocational training.

(3) Specialized restorative training may be furnished as the total course of vocational rehabilitation when there is good promise that its successful completion will restore employability.

(4) Specialized restorative training may be furnished on a part-time basis to a veteran who is employed when:

(i) He is in a suitable occupation but has a handicap from a compensable disability which it is believed will result in unemployability unless he has restorative training, or

(ii) He is not in a suitable occupation because the handicap resulting from his compensable disability is such that it is believed he will become unemployable and specialized restorative training will result in employability in a suitable occupation.

(5) Specialized restorative training pursued preliminary to or as the total course of vocational rehabilitation will be limited to the minimum period necessary but will not exceed 9 months or 2 semesters in length. Such training may be pursued in a sheltered workshop but must not be confused with a sheltered workshop course.

(e) *Sheltered workshop course.* A full-time course of training on the job or combination of training on the job and supplemental related instruction. The disabled veteran is provided vocational training in a specific employment objective in a place where he or she is relatively sheltered from competition with the able bodied. He or she is not required to meet production standards which in ordinary on-the-job training situations would interfere with the restoration of employability. The course is provided through a charitable, religious, educational, governmental, or philanthropic organization which is not operated for profit but primarily to provide vocational training, rehabilitation, and employment to

the physically and mentally handicapped. A sheltered workshop course is a vocational course of training. It will be strictly differentiated from a course of specialized restorative training offered in a workshop for the purpose of work adjustment or personal adjustment. A sheltered workshop course will be prescribed only in those cases in which the veteran's employability cannot be restored through pursuit of the usual course of vocational training in a school or in a training on-the-job establishment. Training under sheltered workshop conditions should give good promise of needed results not otherwise obtainable in the particular case.

(f) *Correspondence course.* A course conducted by mail, consisting of a series of written lesson assignments furnished by a school to the student for study and preparation of written answers, solution to problems, and work projects which are corrected and graded by the school and returned to the trainee.

(1) A correspondence course may be prescribed as part of the course of vocational rehabilitation when it supplements the major part of the course to provide the veteran with theory or technical information directly related to and functional in the practice of the occupation for which he or she is being trained.

(2) A correspondence course alone will not be used as a total course of vocational rehabilitation.

(g) *Training in the home.* A full-time course which a veteran pursues in his or her home with an individual instructor or instructors when:

(1) The limitations imposed by his or her disability prevent regular travel to and from a suitable training facility;

(2) Based on proper medical opinion, it is determined that the veteran is physically capable of successfully pursuing the proposed course of training in the home;

(3) The veteran's home provides a favorable educational environment with adequate work and study space;

(4) It is proper to furnish necessary special equipment; and

(5) There is evidence that upon completion of the training program the veteran will be suitably employable in

his or her home or other place with reasonable assurance of continuing employment.

(h) *Independent instructor course.* A full-time course which is pursued with an individual instructor, who, independently of a training institution or a training on-the-job establishment, furnishes and conducts the course at a suitable place of training.

(1) An independent instructor course will be prescribed only when the course of vocational rehabilitation is not available through an established school, training on-the-job establishment, or sheltered workshop within a reasonable commuting distance from the veteran's home, and the handicap caused by the veteran's disability precludes requiring his or her going elsewhere for training.

(2) The individual training program for a veteran for whom an independent instructor course is prescribed will be planned carefully by the Veterans Administration in collaboration with the instructor and will include a time schedule showing the daily hours of instruction and work assignments.

(3) Since the customary channels opening into employment may not be readily available to a veteran pursuing an independent instructor course, arrangements for satisfactory employment upon completion of the training shall be thoroughly considered and found favorable before the veteran is approved for such training. The veteran will be encouraged to develop gradually a market for his or her products and services and to supply that market so that by the completion of the training program he or she will have been trained into employment.

(i) *Farm cooperative course.* A full-time course designed to restore employability by training a veteran to operate a farm over which he or she has control or to manage a farm as the employee of another. Such course shall be carefully planned and developed by the Veterans Administration in collaboration with the instructor to suit the needs of the individual veteran. Full consideration should be given to the size and character of the farm on which the veteran is to receive the farm part of his or her course. The veteran must become proficient in the

type of farming for which he or she is training—in planning, producing, marketing, farm mechanics, conservation of farm resources, conservation of food, farm financing, farm management, and the keeping of farm and home accounts. Instruction will satisfy the requirements of paragraph (i) (1) or (2) of this section.

(1) Organized group instruction (classroom) in agricultural and related subjects of at least 200 hours per year (not less than 8 hours in any one month and sufficiently more in other months to aggregate the required 200 hours per year) at an agricultural school or other educational agency, plus individual instruction in accord with either of the following:

(i) Where a farm is under the veteran's own control 100 hours of individual instruction per year, not less than 50 hours of which shall be on such farm with at least two visits by the instructor to such farm each month.

(ii) Where the veteran is to be trained to manage a farm of another, not less than 50 hours of individual instruction per year with at least one visit by the instructor to such farm each month.

(2) Farm instruction of at least 200 hours per year (not less than 10 hours in any one month and sufficiently more in other months to aggregate the required 200 hours per year) given by a fully qualified individual instructor by contract either with an educational agency or directly with the individual instructor, when:

(i) It has been definitely found that there is not available within reasonable commuting distance of the veteran's farm organized group instruction (classroom) or that the major portion of such organized group instruction (classroom) as is available does not have direct relation to the veteran's farming operation and the records are clearly and fully documented accordingly, and

(ii) Such instruction is limited to situations where the veteran is being trained to operate a farm over which he or she has control.

(3) Where the course is designed to train a veteran to operate a farm under his or her own control the plan for training developed by the Veterans

Administration in collaboration with the instructor will satisfy the following requirements:

(i) A complete written survey of the farm on which the veteran is to pursue training and an evaluation of the practical potentialities of the farm.

(ii) An overall, long term farm and home plan based upon the survey of the farm.

(iii) An annual farm and home plan prepared before the beginning of each crop year of the prescribed course based upon the overall, long term farm and home plan.

(iv) A detailed individual training program showing the kind and amount of instruction—classroom and individual, or farm group and individual, or individual.

(v) The operation of the farm shall be under the control of the veteran by ownership, lease, or other written tenure arrangement. Where the tenure arrangement is other than by ownership, the lease or other written agreement shall afford the veteran control of the farm at least until the completion of his or her course. The veteran's control must be such that he or she will be free to carry out the teachings of the training program and to operate a farm according to a farm and home plan developed by the Veterans Administration in collaboration with the instructor, the veteran, and, when appropriate, the landlord. Also, the lease or agreement must provide for capital improvements to be made which are necessary for carrying out the farm and home plan, with the veteran furnishing no greater portion of the costs thereof than the benefits accruing warrant. Furthermore, it must provide for the landlord to share the costs of improved practices put into effect in proportion to the returns he or she will receive from such practices. Ordinarily training will be approved for only one veteran on a single farm. However, where conditions of a particular farm are so highly favorable as to size, character, productivity, and equipment to assure the successful rehabilitation of a veteran in partnership with another person, such veteran may be placed in training with one, but not more than one, other veteran on a single farm, when the other vet-

eran is, or immediately will be, in farm cooperative training or has satisfactorily pursued institutional farm training under laws administered by the Veterans Administration. There must be documentary evidence that the two principals have entered into a bona fide partnership agreement which provides for equal authority between the partners in the management and operation of the farm.

(vi) The farm at the time of induction of the veteran into training and throughout the period of training shall be of such size and character that, together with the instruction part of the course, it will occupy the full time of the veteran, will permit instruction in planning, management, and operation of most of the major farming enterprises in the veteran's farm and home plan and, at least by the end of the necessary minimum period of training, will assure him or her a reasonably satisfactory living under normal economic conditions.

(vii) The farm must have the necessary buildings and equipment to enable the veteran satisfactorily to commence pursuit of the course of farm cooperative training, and there must be present conditions which give reasonable promise that any additional items required for pursuit of the course, including livestock, will be available as they become necessary.

(viii) The duration of the prescribed course shall represent a reasonable estimate—subject to lengthening or shortening, as necessary—of how long it will take to accomplish the goals set out in the overall farm and home plan.

(4) Where the course is designed to train the veteran to manage a farm as the employee of another, the plan for training developed by the Veterans Administration in collaboration with the instructor will satisfy the following requirements:

(i) A complete written survey of the farm on which the veteran is to pursue training prior to induction of the veteran into training and showing the kind and size of each enterprise being conducted on the farm, the kind and amount of equipment being used, the number of employees, and other factors which would indicate that the farm facility is satisfactory for pur-

poses of vocational rehabilitation training.

(ii) The employer-trainer shall have agreed to employ the veteran as manager of the farm on which he or she is being trained if his or her conduct and progress remain satisfactory, or there shall be definite assurance that the veteran will be employed as manager of a specified comparable farm.

(iii) The individual instruction on the farm shall be given by the veteran's school instructor.

(iv) The employer-trainer's farm shall be of a size and character which, together with the group instruction part of the course, will occupy the full time of the veteran and will permit instruction in all aspects of the management of a farm of the type for which the veteran is being trained.

(v) The employer-trainer shall agree to instruct the veteran in various aspects of farm management in accordance with the individual training program developed by the Veterans Administration in collaboration with the instructor and employer-trainer.

(vi) The employer-trainer's farm shall have the necessary supplies and equipment which will permit instruction in all aspects of the management and operation of a farm of the type on which the veteran is being trained.

(vii) The employer-trainer shall have agreed to pay the veteran for each successive period of training a salary or wage rate commensurate with the value of the veteran's productive labor and not less than that customarily paid to a non-veteran-trainee in the same or similar training situation in that community.

(j) *Independent study course leading to a degree.* A course pursued by independent study under the following conditions:

(1) The course is offered by a college or university.

(2) The course leads to or is fully creditable toward a standard college degree.

(3) The course consists of a prescribed program of study with provision for interaction either by mail, telephone, personally or by class attendance between student and the regularly employed faculty of the university or college.

(4) The college or university evaluates the course in semester or quarter hours, or the equivalent, and prescribes a period for completion.

(5) Subsistence allowance is payable at the institutional rates prescribed in § 21.133. Measurement of the course will be in accordance with provision of § 21.4270(b), footnote 1, except that seriously disabled veterans whose disability or circumstances preclude regular attendance at an institution of higher learning and for whom an independent study course is a sound method of restoring employability may be paid for such training even though the major portion of the course is not in a classroom or laboratory, if the Veterans Administration determines that the student is pursuing the course at a rate equivalent to one-half time or greater in accordance with school criteria for determining full- and part-time training. If independent study subjects and subjects requiring class attendance are pursued concurrently and both are measured on a credit hour basis, the allowable rate shall be determined on the basis of the combined training load.

(k) *Contract.* All or part of the program of education of a school may be furnished by another school or entity under a contract. The school or entity actually providing the training must be approved by the Veterans Administration. Measurement of the course and payment of an allowance will be appropriate for the course as offered by the school or entity actually providing the training.

[24 FR 2035, Mar. 19, 1959, as amended at 33 FR 12316, Aug. 31, 1968; 39 FR 39040, Nov. 5, 1974; 39 FR 45236, Dec. 31, 1974; 43 FR 35284, Aug. 9, 1978; 44 FR 62493, Oct. 31, 1979]

§ 21.202 Full-time vocational rehabilitation training.

(a) Full-time vocational rehabilitation training for disabled veterans having a normal work tolerance will be:

(1) Institutional-assessed in accordance with §§ 21.4270 through 21.4275 unless training is being pursued in a special school, such as those for persons having speech or hearing defects,

and it is the established policy of the school to consider enrollment for fewer semester, credit or clock hours as full-time enrollment.

(2) On-the-job—accessed on the basis of the number of hours in the prevailing workweek for the locality and in the occupation for which the veteran is training.

(3) Farm cooperative training assessed in accordance with § 21.201(i).

(b) Full-time training for a disabled veteran who is determined by appropriate medical authority to have less than a normal work tolerance will be that amount which his or her work tolerance will permit. A veteran with a reduced work tolerance will be provided training when:

(1) His or her vocational rehabilitation is medically feasible;

(2) His or her program can be planned for completion within his or her statutory limits or there is a plan which offers reasonable assurance of the program being completed by some other agency or responsible individual; and

(3) The amount of time which can be devoted to training by a veteran with a permanent reduced work tolerance is as great as his or her disability will permit; or the veteran has a temporary reduced work tolerance and there is reasonable promise that during training his or her work tolerance will increase. In each case of temporary reduced work tolerance the following are for application:

(i) The veteran will not be entered into training until it is determined that he or she is able to devote to his or her training at least 4 hours a day, exclusive of any time required to travel to and from his or her place of training.

(ii) At the end of each 90-day period proper medical authority will determine the maximum amount of time the veteran can devote to his or her training and his or her individual training program will be developed accordingly.

(iii) The veteran will be removed from his course of vocational rehabilitation at any time his work tolerance falls below four hours per day.

[24 FR 2035, Mar. 19, 1959, as amended at 33 FR 12316, Aug. 31, 1968; 39 FR 45236, Dec. 31, 1974; 43 FR 35285, Aug. 9, 1978]

§ 21.203 Less than full-time vocational rehabilitation training.

A veteran may be enrolled in a program of less than full-time vocational rehabilitation training only in accordance with one of the following:

(a) The veteran, while employed, is being provided specialized restorative training to make it possible for him to hold his present employment, or to prepare him for employment in another occupation because the progressive character of his disability will eventually preclude employment in his present occupation.

(b) The veteran is training on the job in a training establishment not operating full time. When full-time training on the job becomes unavailable because the training establishment is operating on a part-time basis, or is shut down temporarily, it will be determined immediately whether full-time training in the establishment will be available within a period of time not to exceed approvable ordinary and hardship leave. If it is determined that full-time training in the same establishment will be available within a period of time not to exceed approvable leave, the veteran may be continued in training status in that establishment. When it is determined that full-time training will not be available within a period of time covered by approvable leave but it is reasonably certain the establishment will continue to operate on a part-time basis, action will be taken as follows:

(1) If it is determined that the particular establishment is operating less than the amount of time that similar establishments are operating in the general area, the veteran's training will be interrupted and every effort will be made to place him in a training facility which is operating the amount of time which is approximately the standard in the general area.

(2) If it is determined that the particular establishment is operating approximately the same number of days per month as other similar establishments in the general area and there would be no advantage in changing

the veteran to another training facility, the veteran may be continued in the establishment.

(3) Any extension of training status beyond 48 months which is authorized because the training establishment is operated on a part-time basis or was shut down temporarily may not exceed the amount of time for which ordinary and hardship leave was granted because of part-time operation or temporary shutdown during the 4-year period the veteran was in training status.

(c) Institutional training which does not meet the requirements of § 21.202 as full-time training may be authorized on a three-quarter or one-half time basis. Training on a three-quarter or one-half time basis will be measured and assessed in accordance with §§ 21.4270 through 21.4275. (38 U.S.C. 1504, as amended by Pub. L. 90-431, 82 Stat. 447)

[24 FR 2035, Mar. 19, 1959, as amended at 30 FR 11322, Sept. 3, 1965; 33 FR 12316, Aug. 31, 1968]

§ 21.204 Duration of the course.

(a) *Length of the course.* The duration of a course of vocational rehabilitation may not exceed the period necessary to restore employability.

(1) Where the requirements for amount of training necessary to qualify for employment in a specific objective vary from area to area within a State, the disabled veteran will be provided that amount of training which will render him satisfactorily employable in all areas of the State. For example, where the State requires training to a bachelor's degree for certification to be eligible to teach in high school, but some local school systems of that State require training to a master's degree in order to be employed as a high school teacher, it will be proper to train the disabled veteran to a master's degree.

(2) A seriously handicapped veteran may be provided a course of training longer than is ordinarily required to qualify for employment in a particular occupation or may be trained to a higher level than is usually required when the following conditions exist:

(i) The veteran is preparing for a type of work in which he will be at a

definite disadvantage in competing with the non-disabled for jobs or business, i.e., his disability is such that it not only seriously limits the number of occupations which are feasible but it also seriously restricts the number of employment opportunities within the occupation for which employers will consider hiring him or which would otherwise be available to him; and

(ii) A course of training is available which is more advanced than is ordinarily provided for vocational rehabilitation purposes, or an additional body of closely related training is available which affords substantial promise of offsetting the veteran's extra handicap.

(b) *Providing vocational rehabilitation training when the program cannot be completed by the Veterans Administration.* When it is determined that a disabled veteran meets all the conditions for vocational rehabilitation training but he lacks sufficient time to complete training by the termination date applicable to him under § 21.42, he may be entered, reentered, or continued in training under one of the following conditions:

(1) There is a written agreement among the veteran, the Veterans Administration, and some other responsible agency or individual that, upon expiration of the veteran's entitlement under chapter 31, the responsible agency or person will provide the remaining amount of training necessary to restore the veteran to employability so long as his or her conduct and progress remain satisfactory. Such responsible agency or person may be the State rehabilitation agency or it may be the responsible official of a grant-in-aid fund which provides an amount that gives support to living expenses and for school training, tuition costs if any. The essential requirement is that support of a veteran's program will be reasonably assured and he or she agrees that it is sufficient to enable him or her to remain in the course to its completion. A veteran may enter training or reenter for a new objective only if there remains at least 3 months between the date of entrance or reentrance and the veteran's termination date.

(2) It is determined that the veteran who has entered into training properly planned for completion by his or her termination date will not reach employability by that date for reasons beyond his or her control and it is not possible to arrange for completion of training by some other agency or individual. In such case the veteran will be allowed to continue the course for his or her selected objective to his or her termination date, at which time all obligation of the Veterans Administration will cease.

(3) The prescribed course of vocational rehabilitation leads to an objective the practice of which requires passing of an examination for license and the veteran is able to complete all of the course by his or her termination date but is unable to take the licensing examination by that date. The veteran will be notified that obtaining a license will not be the responsibility of the Veterans Administration.

[30 FR 11322, Sept. 3, 1965, as amended at 43 FR 35285, Aug. 9, 1978]

§ 21.205 Adjusting the duration of the course.

A course of training will be prescribed and arranged for which is necessary to restore employability in the occupation which has been selected. Although certificate B gives an estimated length of the course, the duration will be that period of training which is necessary to qualify for employment taking into account any applicable previous training or experience in the individual veteran's case. As the veteran proceeds with the course there will be a continuing appraisal of his or her progress toward satisfactory completion of training. Based on this appraisal, any necessary adjustments to lengthen or shorten the previously planned period of training will be made to assure that:

(a) The veteran upon completion of such training will be employable as a trained worker in the selected occupation; and

(b) The duration of the veteran's course will not exceed the period necessary to make him or her employable in his or her objective.

[43 FR 35285, Aug. 9, 1978]

§ 21.206 Approval of training in excess of 4 years.

The purpose of vocational rehabilitation to restore employability will be accomplished within 4 years unless it is determined that a longer period is necessary. Training in excess of 4 years may be considered necessary to fulfill the purpose of vocational rehabilitation and may be approved only under one of the following conditions:

(a) The veteran cannot be trained to employability in an occupation consistent with the vocational handicap resulting from his or her disability and suitable in terms of his or her aptitudes, abilities, and interests, without exceeding 4 years of training time, subject to the following:

(1) Where more than one objective is determined to be suitable, the one requiring the shortest period of training is selected;

(2) Training in excess of 4 years will not be approved for the purpose of including a medical internship or any part thereof in the veteran's training program;

(3) Where the veteran's selected objective is reasonable in terms of his or her educational background and demonstrated abilities and he or she lacks the general education necessary for entrance into or satisfactory pursuit of his or her vocational course, general education on the elementary or secondary level may be provided if the general educational level to be attained can be reached in not to exceed 2 full school years—approximately 18 months—and the vocational course can be completed in not to exceed an additional 48 months.

(b) Circumstances beyond the control of the veteran necessitate the extension of training which was originally planned for completion within 4 years, or which was originally authorized under this section to exceed 4 years; or

(c) Training in excess of 4 years is necessary in order to qualify the seriously handicapped veteran for employment.

[24 FR 2035, Mar. 19, 1959, as amended at 30 FR 11322, Sept. 3, 1965; 43 FR 35286, Aug. 9, 1978]

§ 21.207 Repetition of a course.

(a) A veteran having completed a course under chapter 31 according to the standards and practices of the institution ordinarily will not be authorized to pursue it again at the expense of the Government. However, repetition of the course or a particular part or parts of it may be approved when it is determined to be necessary to accomplish the veteran's vocational rehabilitation. A veteran repeating a course under chapter 31 is subject to the same requirements for satisfactory pursuit and completion of the course as are other students taking the course. (38 U.S.C. 1780(a) Pub. L. 94-502, 90 Stat. 2383)

(b) An eligible veteran who has completed a course of training under chapter 31 may pursue a review course if it is specifically organized and conducted as a review course. The number of repetitions of a review course which may be approved for a particular veteran will be determined on the basis of his or her need and a reasonable assurance that further repetition will restore employability.

(c) Audited courses, as defined in § 21.4200(i), may not be authorized as a part of a program of training under chapter 31. If an individual repeats a course, pursuant to paragraph (a) of this section, however, payment of benefits may be made, since the course is being pursued in the same manner as a credit course, whether or not credit is given, i.e., the individual is not merely a listener and must meet the same requirements as other students. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

[43 FR 35286, Aug. 9, 1978]

STATUS OF VETERANS PRIOR TO INDUCTION INTO TRAINING

§ 21.208 Status "induction pending."

When certificate B is completed and signed the veteran will be in status "induction pending" until one of the following occurs:

(a) The veteran is inducted into training.

(b) The veteran declines induction into training.

(c) The veteran's case is referred back for counseling for some reason

such as (1) reconsideration of the employment objective, or (2) reconsideration of medical feasibility.

(d) It is established that a determination of eligibility or need for vocational rehabilitation is based on fraud, error of law, confusion of names, misfiling of papers; or that the veteran never had a service-connected disability; or that the veteran's rights to vocational rehabilitation are otherwise forfeited.

(e) The veteran's disability is reduced to a noncompensable degree.

(f) The veteran's termination date is reached.

(g) The veteran dies.

[24 FR 2039, Mar. 19, 1959, as amended at 30 FR 11322, Sept. 3, 1965]

§ 21.209 Status "training declined."

(a) A veteran in status "induction pending" who has never been in vocational rehabilitation training will be changed to "training declined" when, after being properly notified that suitable training is available for him or her and instructed as to the next step he or she should take:

(1) Fails to respond; or

(2) Declines or refuses induction; or

(3) Defers induction for a period exceeding 30 days beyond the scheduled date of induction, except where such deferment is due to illness or other sufficient reason; or

(4) Has been given notice to report at a designated place and time to commence training, and he or she fails to report and fails to furnish satisfactory reasons for not reporting; or

(5) Commences or continues to pursue education or training under chapter 34 or 35.

(b) A veteran who is changed from status "induction pending" to status "training declined" will be informed that if his or her disability rating is reduced to less than compensable degree he or she will lose entitlement for vocational rehabilitation. The veteran will also be informed that if he or she requests training after 60 days from the time he or she is placed in "training declined" status the entire question of need for vocational rehabilitation will have to be reconsidered.

(c) Where the veteran requests induction into training within 60 days of the date he or she is placed in "training declined" status he or she may be entered into training without further counseling when:

- (1) His or her disability has not been reduced to less than compensable degree, and
- (2) There is no known reason why further counseling is needed.

[43 FR 35286, Aug. 9, 1978]

SELECTING THE TRAINING FACILITY

§ 21.210 Arrangements for training on the job.

(a) Arrangements and agreements will be made with private and public establishments within the regional territory to furnish training on the job, including apprentice training to accomplish the vocational rehabilitation of disabled veterans where the establishment:

- (1) Meets the criteria applicable to selecting a facility; and
- (2) Agrees to furnish the Veterans Administration monthly a statement in writing showing wages, compensation, and other income paid directly or indirectly to each trainee during the month; and
- (3) Signs an agreement to provide training on the job to disabled veterans.

(b) A joint apprenticeship committee or similar labor-management committee may be recognized as a training facility when:

- (1) The committee is charged with the responsibility for controlling training programs in a standard apprentice course for a given craft;
- (2) The establishments which such committee uses for training are qualified to provide a satisfactory course of training;
- (3) The joint committee satisfactorily performs the functions delegated to it.

(c) Agreements with establishments for training veterans will be executed as the need develops and when there is reasonable assurance that the establishment will be used. The agreement may cover any or all courses offered by the establishment which it is expected will be used even though the

need for all such courses is not present at the time the agreement is executed.

[24 FR 2040, Mar. 19, 1959, as amended at 30 FR 11323, Sept. 3, 1965]

§ 21.211 Selecting the facility.

(a) *Criteria to be met by the training facility.* Veterans are to be placed only in training facilities which:

- (1) Have space, equipment, instructional material, and instructor personnel adequate in kind, quality, and amount for the desired training of the particular veteran;

(2) Have fully accepted the obligation to give training in all parts of the training program which has been prepared for him to give to the particular veteran;

(3) Provide courses which meet the customary requirements in the locality for employment in the particular occupation in which training is given and which meet the requirements for license or permit to practice the occupation, if such is required;

(4) Provide continuous training without interruption except for normal holidays and vacation periods for all veteran-trainees placed with them;

(5) Provide daytime courses for the trainee except where a veteran training on the job must take his turn on the night shift; an evening course is prescribed as related instruction supplementing daytime training; or necessary courses cannot be obtained during the working hours of the day;

(6) Will modify the program, when necessary, to compensate for the limitations resulting from the veteran's particular disability or needs;

(7) Will organize training into definite steps or units which will result in progressive training;

(8) Will encourage rapid progress of each trainee rather than limit progress of the individual to the progress of the group;

(9) Will not, during the period of training, continue trainees on productive operations beyond the point of efficient training; and

(10) Indicate willingness to cooperate with the Veterans Administration in its supervision of the veteran and execute report forms covering attend-

ance, performance, and progress in training.

(b) *Additional considerations.* In selecting the place of training, its accessibility, and the preference of the veteran will be considered.

(c) *Ownership or control by veteran or relative.* A veteran will be entered into training in a proprietary school or training on-the-job establishment in which he or a close family relative has control or a monetary interest only when:

(1) Another satisfactory facility is not available;

(2) The social and economic relationship of teacher to pupil will be satisfactory for the efficient promotion of learning; and

(3) In cases of training on the job, the veteran will be paid a wage that fully compensates him for services rendered while in training.

[24 FR 2040, Mar. 19, 1959, as amended at 30 FR 11323, Sept. 19, 1965]

THE INDIVIDUAL TRAINING PROGRAM

§ 21.212 Preparation and content.

(a) Prior to or immediately upon inducting the veteran into training there will be prepared for him a detailed individual training program designed to qualify him for his selected occupation. It will be written in such definite terms and consist of elements so clearly appropriate to the chosen employment objective that its successful completion will assure satisfactory employability in the chosen objective. In order to take care of the peculiar requirements of the veteran, it may include items in addition to those usually required in a training program for a particular occupation. For example, a complete training program for a lawyer commonly would not include the subject stenography, but for a particular veteran stenography might be necessary and might properly be made a part of his individual training program.

(b) For professional objectives other than physician, physician, osteopathic, and dentist, successful completion of the professional curriculum at an approved professional school ordinarily qualifies an individual to practice the profession for which the school has

trained him, subject, in some instances, to State licensure requirements. Accordingly, the professions physician, physician, osteopathic, and dentist, are the only ones where internship may be included in the training program. Where the graduate of a professional school is required to have experience in the practice of his profession as a prerequisite to licensure, as, for example, in pharmacy, the period is sometimes referred to as an internship or an apprenticeship, but actually the situation is one of employment, and may not be included in the veteran's training program.

[24 FR 2040, Mar. 19, 1959, as amended at 33 FR 12317, Aug. 31, 1968]

INDUCTING THE VETERAN INTO TRAINING

§ 21.220 Conditions for induction into training.

A veteran may be inducted into training in an institution or establishment for the purpose of pursuing a course of vocational rehabilitation when:

(a) Vocational counseling has been rendered and certificate B executed;

(b) There has been obtained and is waiting to be used a place of training which meets the criteria for selecting a training facility and, in the case of training on the job, has agreed to report to the Veterans Administration monthly as required by the law any payments of money to the trainee;

(c) An adequate individual training program for the veteran has been prepared and prescribed;

(d) There is no known reason for any change in the determination that training is medically feasible;

(e) The veteran's disability rating has not been reduced to a non-compensable degree; and

(f) The service connection of the veteran's disability has not been severed.

[24 FR 2041, Mar. 19, 1959, as amended at 30 FR 11323, Sept. 3, 1965]

§ 21.221 Memorandum agreement prior to induction into training in a school.

A memorandum agreement will be effected immediately to permit the induction of the veteran into training when:

(a) He is to be entered into a school with which a contract is required;

(b) His vocational rehabilitation will be jeopardized by withholding him from training because the contract cannot be completed immediately; and

(c) Indications are that the contract eventually will be completed.

[24 FR 2041, Mar. 19, 1959, as amended at 30 FR 11323, Sept. 3, 1965]

§ 21.222 Additional conditions for induction into training on the job.

When the prescribed course of vocational rehabilitation consists of or includes training on the job, the following conditions must be met prior to inducing the veteran into training:

(a) The training establishment has agreed to pay the veteran during training a salary or wage commensurate with the value of the veteran's productive labor and not less than that customarily paid to nonveteran-trainees in the same or similar training situation.

(b) The veteran understands that when his or her combined income for wages and his or her subsistence allowance exceeds the standard entrance wage for a trained worker, the subsistence allowance will be reduced in that amount by which the combined income exceeds the trained worker rate.

(c) The salary or wage rate for productive labor incident to training is not less than that prescribed by the Fair Labor Standards Amendments of 1961 (Pub. L. 87-30).

(d) There is the understanding with the employer-trainer that if the veteran's conduct and progress are satisfactory, the training will terminate with employment.

(e) The training establishment signs an agreement to provide training on the job to disabled veterans.

(f) Training in an agency of the Federal Government, as permitted by § 21.223(c), will be in accord with the conditions and requirements of training on-the-job except that, when it is determined to be necessary to accomplish vocational rehabilitation, a veteran may be entered into training without compensation by the training establishment. The conditions applicable to such unpaid training are as follows:

(1) The determination as to the need for such training, as all or part of a veteran's program of vocational rehabilitation, will be made collaboratively by the Counseling Psychologist and Vocational Rehabilitation Specialist, based on an analysis of the veteran's needs, as indicated by his or her disability, education and work experience, employment goal, and other pertinent factors, in relation to available training resources and the requirements for restoration of employability.

(2) Unpaid training in a Federal agency may be used to prepare the veteran for employment in that agency, or, as appropriate, may be used as preparation for other public employment or employment in the private sector.

(3) Unpaid training may be used to provide training in the areas of knowledge and the skills and competencies required for a specific occupation and/or to provide work experience when such work experience is needed for the purposes of adjustment or transition to render the veteran employable. (38 U.S.C. 1511; Pub. L. 94-502, 90 Stat. 2383)

[24 FR 2041, Mar. 19, 1959, as amended at 26 FR 9166, Sept. 29, 1961; 30 FR 11323, Sept. 3, 1965; 40 FR 42879, Sept. 17, 1975; 43 FR 35286, Aug. 9, 1978]

§ 21.223 Induction into training on the job at subminimum wage rates or training at Federal facilities without pay.

(a) The Fair Labor Standards Act of 1938, as amended, requires a minimum wage with provision for an overtime rate, for most persons who are engaged in interstate commerce or in the production of goods for interstate commerce. The Administrator of the Wage and Hour Division, United States Department of Labor, may approve a subminimum hourly wage rate for handicapped workers where necessary in order to prevent curtailment of opportunities for employment. Similarly, the Walsh-Healey Public Contracts Act (Pub. L. 846, 74th Cong.) requires that all persons employed by a contractor on work subject thereto be paid not less than the applicable minimum wages as determined by the Secretary of Labor. When the hours of

employment-training exceed 40 in any one work week or 8 in any one day, employees not exempt must be paid not less than time and one-half. Questions of coverage in all doubtful cases will be cleared with the Wage and Hour Division's Regional Director before induction into training.

(b) When a prospective employer-trainer will not meet the minimum wage requirements of the Fair Labor Standards Act, or the Walsh-Healey Public Contracts Act, such training facility will be used only when:

(1) No other satisfactory training opportunity for the desired training is available in the veteran's community;

(2) The trainee's disability precludes initial entrance into training at the minimum wage otherwise applicable; and

(3) A certificate has first been issued permitting induction and prescribing the rate to be paid. In the absence of such a certificate, the employer-trainer is liable to the penalties prescribed in the act, including the possibility of an employee's suit. The subsistence allowance paid the trainee by the Veterans Administration may not be considered as offsetting any part of the wage or other remuneration that will be due to the worker from the employer-trainer.

(c) Notwithstanding any other provision of law, the facilities of any agency of the United States may be used to provide unpaid training or work experience as part or all of a veteran's program of vocational rehabilitation when the Counseling Psychologist and Vocational Rehabilitation Specialist determine such training or work experience to be necessary to accomplish vocational rehabilitation in accordance with § 21.222(f)(1). While pursuing such training or work experience, an uncompensated veteran shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5, United States Code, but not for the purposes of laws administered by the Civil Service Commission. (38 U.S.C. 1511; Pub. L. 94-502, 90 Stat. 2383)

[24 FR 2041, Mar. 19, 1959, as amended at 26 FR 9166, Sept. 29, 1961; 43 FR 35286, Aug. 9, 1978]

§ 21.224 Effective date of induction into training.

(a) The effective date of induction of a veteran into training will be the date the veteran actually commences or reenters the prescribed course but not earlier than the date the veteran is authorized by the Veterans Administration to commence the course. In schools operated on a term basis, the date on which the school requires the veteran to report for prescribed activities, such as registration, may be considered the date of commencing the prescribed course, if the veteran reports on that date.

(b) A veteran, however, may be inducted into vocational rehabilitation training retroactively when the facts, equities, and demonstrated good faith on the part of the veteran justify such action.

[30 FR 11323, Sept. 3, 1965, as amended at 31 FR 6771, May 6, 1966]

§ 21.225 Training of psychiatric patients while on nonbed care status from Veterans Administration hospital.

An eligible veteran who is in need of vocational rehabilitation and for whom training is medically feasible may be entered or reentered into training while on nonbed care (NBC) status from a Veterans Administration hospital when:

(a) He or she is currently rated competent; or

(b) He or she is currently rated incompetent but has legally appointed guardian; or

(c) He is currently rated incompetent but has no legally appointed guardian but his subsistence allowance for training under chapter 31 will be withheld until he is found competent or until a guardian is appointed. In such cases arrangements will be made with the chief officer of the Veterans Administration hospital to release funds in the veteran's account in the Personal Funds of Patients to be used for the veteran's subsistence while in training.

[24 FR 2041, Mar. 19, 1959, as amended at 24 FR 4053, May 20, 1959; 30 FR 11323, Sept. 3, 1965; 40 FR 42879, Sept. 17, 1975]

§ 21.226 Training while a patient in a Veterans Administration hospital.

(a) Subject to the provisions of other applicable Veterans Administration regulations, an eligible veteran may be entered or reentered into training prior to release from a Veterans Administration hospital when all the following conditions are met:

(1) The Veterans Administration hospital has determined that the proposed training will not materially interfere with the veteran's regime of medical treatment nor delay hospital discharge and that the disabled veteran will be able to spend a significant part of the day away from the hospital at the proposed training facility or in a program of independent study.

(2) The Vocational Rehabilitation Board has determined not only that training is feasible but that the course to be undertaken constitutes bona fide vocational rehabilitation training for the individual veteran and that the veteran will pursue a significant amount of training so that training benefits will not be exhausted at a rate which may adversely affect post-hospitalization vocational rehabilitation training.

(b) A correspondence course of training will not be pursued as the total course of training for a veteran who is hospitalized.

(c) During the course of training the training officer will be alert to any factors which may interfere with the patient's success in training or with his eventual discharge from the hospital. If the patient's adjustment is questionable at any time, the training officer will immediately bring this to the attention of the hospital, for determination as to whether any change in medical treatment is indicated.

[24 FR 2041, Mar. 19, 1959, as amended at 30 FR 11323, Sept. 3, 1965; 38 FR 22578, Nov. 27, 1973]

§ 21.227 Release of information.

(a) When, for the purpose of arranging for the training or employment of a veteran, it is necessary to release information regarding his disability or other matters to a person or establishment requested by the Veterans Administration to provide training or employment for the veteran, the infor-

mation directly pertinent to the purpose may be released to the appropriate party, when the veteran authorizes such release.

(b) Ordinarily, the veteran will have authorized the release of information regarding disability at the time of counseling. However, where the veteran objected to the release of such information at the time of counseling, information regarding his disability or other matters may not be released unless the veteran reconsiders and authorizes it. Confidential information which does not enable the training institution better to serve the veteran in the pursuit of his course will not be included. With the release of any information which the trainee has authorized, there will be included special notice that the information is strictly confidential, is furnished solely for the purpose of enabling the training institution better to serve the veteran in the pursuit of his course, and under no circumstances is to be released to any other parties.

[30 FR 11323, Sept. 3, 1965]

SUPPLIES

SOURCE: Sections 21.230 to 21.243 appear at 24 FR 2042, Mar. 19, 1959, unless otherwise noted.

§ 21.230 Definition.

The term "supplies" includes books, tools, supplies and equipment.

§ 21.233 Prevention of abuse.

The furnishing of supplies is fraught with possibilities of marked abuse. Accordingly, care is to be exercised, including examination of the veteran's records, to make certain articles will not be furnished to the veteran-trainee which duplicate those which have been previously furnished by the Veterans Administration or which otherwise are in his possession. Supplies are to be furnished under the most careful checks as to what is required by the training institution of all trainees. The veteran is not to be allowed to determine what supplies will be furnished.

§ 21.234 General limitations.

(a) Supplies will be furnished to the veteran when they are needed and not all at the beginning of the course.

(b) Articles necessary to further pursuit of the course and which are lost, stolen, misplaced, or damaged beyond repair, will be replaced at Government expense when it is determined that such loss or damage occurred through no fault on the part of the veteran, including lack of due care. If any articles which are indispensable to further pursuit of the course need to be replaced, due to fault on the part of the veteran, it will be necessary for him to replace them. If the veteran is willing but financially unable to make replacement, an advancement for this purpose may be made from the Vocational Rehabilitation Revolving Fund if the veteran is eligible for the loan. Where a veteran refuses to replace articles indispensable to further training after it is determined that the loss was due to fault on his part, it will be necessary to discontinue training for lack of cooperation.

(c) The Veterans Administration will not reimburse a veteran who personally buys supplies. Payment for supplies is made to the training institution or to the vender from whom they are purchased by the Veterans Administration. If required supplies were sold to a veteran by an institution and the institution chooses to return to the veteran the amounts paid by him so that the charges stand as an unpaid obligation of the Veterans Administration to the institution, payment may be made if otherwise in order.

(d) When a particular article is furnished for use in more than one subject and the same article is required for use in other subjects or in another quarter, semester, or school year, the article furnished will be made to serve for all such requirements and will not be duplicated at Government expense. Also, the supplies which have been furnished for one part of a combination course will not be duplicated for the other part of the course.

§ 21.235 Authority to furnish supplies to veterans in school training.

(a) Subject to other applicable Veterans Administration regulations, a

veteran pursuing a course of vocational rehabilitation in a school may be furnished supplies required by the school to be personally owned by every other student pursuing the same course.

(b) It is the general policy to have schools furnish supplies wherever practicable inasmuch as such practice will facilitate service to the veteran. If the school cannot be induced to furnish supplies, they will be furnished in the manner supplies are furnished for training on the job.

§ 21.236 Authority to furnish supplies to veterans in training on the job.

(a) Subject to the provisions of other applicable Veterans Administration regulations, a veteran pursuing a course of vocational rehabilitation on the job may be furnished necessary supplies as required of all similarly circumstanced trainees in the establishment, but not to exceed in quality or amount such items as are ordinarily required to be in the personal possession of trainees pursuing training for the particular objective in establishments in the same general locality.

(b) A veteran pursuing a course of vocational rehabilitation training on the job may be furnished necessary textbooks and other text materials when:

(1) The training establishment certifies that the textbooks or other text material are required to be owned and used by the veteran as a part of his course of training on the job;

(2) The use of the textbooks or other text materials is made a part of the veteran's individual training program; and

(3) The use of the textbooks or other text material definitely is arranged for on the basis of study assignments, the completion of which by the veteran is checked and evaluated by the trainer and reported by the veteran on his monthly report of training.

§ 21.237 Furnishing supplies to veterans in institutional on-farm training.

Before a veteran may be inducted into institutional on-farm training, the farm on which he is to pursue the on-

farm part of his course must be equipped with the kinds and amount of supplies and equipment which are necessary to enable him to pursue successfully that portion of the course. Accordingly, the Veterans Administration will not furnish any equipment or supplies which may be required to operate the farm. Where organized group instruction in a school is a part of the veteran's course, the Veterans Administration will furnish those books and consumable supplies required by the school to be personally owned by all students in the school portion of the course. Where all instruction is given on the veteran's farm by an individual instructor, the Veterans Administration will furnish only those textbooks and consumable supplies required by the instructor to be owned by the veteran as a part of his individual training program. The use of such textbooks will be arranged for on the basis of study assignments, the completion of which is checked and evaluated by the instructor and reported by the veteran on his monthly report of training. Special equipment may be authorized when needed because of the character of the veteran's disability.

§ 21.238 Furnishing magazines and other periodicals.

Subscriptions to magazines and other periodicals for veterans will not be at Veterans Administration expense. However, where specific magazine articles are selected by a school and prescribed as required text material, appropriate past issues of magazines or periodicals or reprints of articles excerpted from them may be furnished at Veterans Administration expense in the same way as school textbooks are furnished. Reprints as authorized in this section shall consist only of those issued and offered for sale by the publishers.

§ 21.239 Furnishing supplies to veterans pursuing training in the home.

A veteran pursuing vocational rehabilitation training in the home may be furnished:

(a) Necessary supplies in quality and amount not to exceed supplies which are generally required to be in the per-

sonal possession of all students or trainees by schools or training establishments in the same general area which train individuals for the objective the veteran is pursuing in his home.

(b) Equipment which is essential to the prescribed course of training because the veteran is pursuing it in his home. Equipment in this category consists of items which are ordinarily provided by the place of training; for example, shop equipment, which would be available to the veteran but for the limitations imposed by his disability which render him unable to travel to a place of training where such equipment is available.

(c) Minimum necessary textbooks and other text material when the following conditions are met:

(1) The instructor or the institution furnishing the training in the home certifies that the textbooks and other text materials are required to be owned and used by the veteran as a part of his course, and

(2) The use of the textbooks or other text material is made a part of the veteran's individual training program.

§ 21.240 Furnishing clothing.

One of the purposes of the subsistence allowance is to enable the veteran to provide himself with clothing. Apparel worn in lieu of ordinary clothing will not be identified as articles of training equipment or supplies. Consequently, gymnasium clothing, laboratory coats and trousers, nurses or medical technicians uniforms, school or military uniforms, coveralls, work uniforms, or other similar articles will not be furnished by the Veterans Administration even though the training establishment may require a certain type or style of apparel to be worn by all students, trainees, or employees. Protective articles, such as laboratory aprons, rubber gloves, goggles, et cetera, which are required to be worn for the purpose of protecting the trainee from physical harm incident to pursuit of the course and are not worn in lieu of or for the purpose of protecting his personal clothing, may be fur-

nished when required to be worn by all students taking the same course.

§ 21.241 Furnishing items susceptible of personal use.

Musical instruments, cameras and their accessories, tennis rackets, golf clubs, fountain pens, desk sets, and similar items which are susceptible of use for personal purposes will not be furnished unless indispensable to the particular major or minor unit courses prescribed by the Veterans Administration as essential to accomplishing the selected employment objective, and such items are otherwise furnishable under applicable Veterans Administration regulations on supplies. Such items will not be furnished for elective courses.

[30 FR 11323, Sept. 3, 1965]

§ 21.242 Furnishing special equipment.

(a) Special equipment made up of items which, because of the nature of the veteran's handicap, are necessary to enable him to undertake and pursue successfully the prescribed course of training may be furnished. This is equipment which will enable the veteran to accomplish those things which persons not disabled are able to do without special equipment but which the particular veteran, because of his disability, cannot do and therefore cannot pursue the prescribed course satisfactorily. Equipment in this category ordinarily will be items not necessary to persons not disabled but may include such items modified in design and construction as, for example, a workbench with work seat especially designed and constructed to compensate the veteran's inability to move about freely.

(b) Special equipment not required for training purposes but necessary to overcome the handicap of blindness as contemplated in chapter 17, section 614, will be furnished under that chapter rather than under chapter 31.

(c) Consumable supplies may be furnished as needed for training purposes in the operation of special equipment, such as sound recorders and braille writers. The amount, grade, and quality of such consumable supplies will be limited to the veteran's actual need for the supplies in his training. Sound

recording discs may be reconditioned and reissued when it is to the economic advantage of the Government.

[30 FR 11323, Sept. 3, 1965]

§ 21.243 Release of and repayment for training supplies.

(a) A veteran will not be required to pay for consumable supplies where he fails to complete his course of vocational rehabilitation.

(b) A veteran will not be required to pay for nonconsumable supplies unless it is determined that his failure to complete his course was because of fault on his part. In making such determination, the veteran will be given the benefit of any reasonable doubt.

(c) Whether or not the veteran is found to be at fault, he will not be required to repay the Veterans Administration for supplies furnished him at Veterans Administration expense when:

(1) He was pursuing his course at a school which recovers nonconsumable supplies from veterans through contractual arrangements with the Veterans Administration and the veteran returned to the school all the nonconsumable supplies furnished him at Veterans Administration expense; or

(2) He has reentered or is known to be in the process of reentering the Armed Forces;

(3) He completed satisfactorily one-half or more of the prescribed course (or term where applicable in the case of school training) for which the supplies were furnished;

(4) He certifies that he is using the supplies furnished him at Veterans Administration expense in employment;

(5) The value of the supplies is less than \$25, or

(6) He dies while in training or in training interrupted status.

(d) The veteran will be deemed to have failed to complete his course because of fault on his part when:

(1) He withdraws from his course at the request of the institution;

(2) He abandons his training without prior or concurrent notice to the Veterans Administration;

(3) His course is discontinued by the Veterans Administration because of

unsatisfactory conduct or progress, or both;

(4) His failure to complete the course is due to his negligence or misconduct; or

(5) He abandons his training after pursuing his course for less than 3 months, or less than one-half of the prescribed duration of the course, whichever is the lesser period.

(e) Where it is determined that the veteran is at fault and repayment for supplies is not excused, he will be required to repay the Veterans Administration for nonconsumable supplies furnished him at Veterans Administration expense. The amount to be repaid will be the value at which the supplies were issued to the veteran less a percentage equivalent to the percentage of the prescribed course (or term, where applicable in the case of school training) completed. For example, a veteran who has completed one-third of the prescribed course or term for which supplies were furnished will be required to repay two-thirds of the value at which the supplies were issued to him. Supplies will not be accepted in lieu of repayment, except when the Veterans Administration has authorized a change of objective or the veteran fails to complete a course of training in the home and he has supplies or special equipment to which he is not entitled.

(f) If for any reason the veteran fails to complete the prescribed course of training in the home for which equipment has been furnished to equip his home as a place of training, he will be required to return such equipment to the Veterans Administration or to pay the reasonable value thereof; except, if the veteran has completed such part of his training that he is employable and has been declared rehabilitated, or he has been placed in "entitlement expired" status and there is an agreement whereby some other responsible agency or individual will provide the remaining amount of training necessary to restore employability he will not be required to return such equipment or to pay the reasonable value thereof. The veteran will be advised accordingly. For any special equipment furnished to the veteran to compensate for the handicapping effects

of his disability, a separate finding will be made whether failure was due to fault on his part.

[24 FR 2042, May 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965; 35 FR 4704, Mar. 18, 1970]

SUPERVISION OF THE INDIVIDUAL VETERAN

§ 21.245 General.

Supervision of the disabled veteran will consist of the professional and technical assistance needed by the veteran in pursuing vocational rehabilitation training and adjusting in employment. This supervision will include arranging for services and assistance such as needed medical and dental attention, assistance of the social worker, personal adjustment counseling, employment placement assistance by the State employment service and, in fact, everything possible to assure vocational rehabilitation in a complete and real sense.

[24 FR 2043, Mar. 19, 1959]

§ 21.250 Adjustments in the training situation.

There must be continuous awareness of the veteran's progress toward satisfactory vocational rehabilitation. At frequent intervals it must be determined whether he is progressing satisfactorily and whether he will be employable upon completion of his course.

(a) Whenever it becomes clear that completion of the course will not make the veteran employable, corrective action should be taken so his training will make him employable, or it is definitely determined that he cannot be made employable through any course of vocational rehabilitation which is available.

(b) When a veteran indicates dissatisfaction with his course of vocational rehabilitation or when the training institution recommends a change or discontinuance of the veteran's course, the instructor or faculty adviser of the veteran should be contacted. Through him arrangements should be made for a personal discussion with the veteran and an appropriate representative of the institution, individually or jointly,

to effect, if possible, a satisfactory correction of the difficulty. This may be done through a minor adjustment in the course of an adjustment on the part of the veteran as to attitude, performance, etc. All possible cooperation should be given to the institution to accomplish the adjustment of the veteran in the training situation. The trainer or instructor should be assisted in understanding the need for any special procedures which may be necessary due to the particular disability of the veteran. If the dissatisfaction or difficulty cannot be corrected through minor adjustment, then there should be a change of training institution, change of the veteran's employment objective, referral of the veteran to the Vocational Rehabilitation Board, or other appropriate action.

[24 FR 2043, Mar. 19, 1959]

§ 21.252 Change of employment objective.

(a) A veteran once inducted into training ordinarily will be expected to pursue his training program to completion without changing his employment objective insofar as it is desirable for him to do so. A change of employment objective will be authorized under one of the following conditions:

(1) It is determined that continuance or reentrance of the veteran in training for the present objective will result in failure to accomplish bona fide vocational rehabilitation for reasons not within the veteran's control;

(2) Although the veteran could continue and complete successfully the training for his present objective, the period of time required to complete training for the objective he desires will not exceed that required to complete training for his present objective and it is determined through counseling that the desired objective is more in keeping with his interests and aptitudes; or

(3) Although the veteran could successfully complete training for his present objective in less time than the period of time required to complete training for the objective he desires, his case meets one of the following conditions:

(i) the experience of the veteran and his performance in training have demonstrated that his aptitudes and inter-

ests or physical capacities are at considerable variance with the evaluation of his aptitudes and interests or physical capacities which was made at the time the present objective was selected and approved, and had current evidence about the veteran then been available the desired objective would have been approved if selected by the veteran, and

(a) The total period of vocational rehabilitation training time will not exceed the maximum of 48 months; and

(b) The change of objective is approved by a committee composed of the Chief of Vocational Counseling, Training and Adjustment, a counselor and a vocational rehabilitation specialist; or

(ii) The veteran agrees to pursue independently of the Veterans Administration a portion of the training for the desired objective sufficient to enable him to complete the training for the desired objective in no greater period of time than completion of the training for his present objective would require and it is determined through counseling that the desired objective is more in keeping with the veteran's interests and aptitudes. Where the change of objective is approved under this condition, the veteran will be informed that upon completing the necessary portion of his training independently of the Veterans Administration he will be reentered into training, provided, in the meantime, his disability rating is not reduced to less than compensable, and the service connection of his disability has not been severed.

(b) A change of employment objective will not be approved where a veteran's disability rating has been reduced to less than a compensable degree. Nor will a veteran be permitted to commence training for a new employment objective after his disability rating has been so reduced.

(c) Where a veteran's disability compensation has been suspended by reason of his failure to report for a physical examination, a change of employment objective will not be approved unless and until the veteran has reported for the required physical examination and has been assigned a

disability rating of compensable degree.

(d) Where a change of employment objective is authorized, the veteran will be required to return or repay for non-consumable supplies furnished at Veterans Administration expense for the previous employment objective which are not required for pursuit of training for the new objective.

[24 FR 2043, Mar. 19, 1959, as amended at 30 FR 2705, Mar. 3, 1965; 30 FR 11324, Sept. 3, 1965]

§ 21.253 Additional considerations incident to supervision.

When a veteran needs advice or assistance in matters concerning other services of Veterans Administration which affect directly or indirectly the success of vocational rehabilitation, such assistance as is appropriate and feasible shall be given. Any information or services given shall be based upon and in accordance with the appropriate following paragraphs:

(a) *Medical services for veterans pursuing vocational rehabilitation training.* (1) A veteran who has been found in need of vocational rehabilitation and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, is entitled to such of the following kinds of treatment as may be medically determined necessary to make possible his entrance into a course of training, or to prevent interruption of a course of training, or to hasten the return to a course of training of a veteran in interrupted or leave status when a cessation of instruction has become necessary because of illness or injury.

- (i) Emergency hospitalization;
- (ii) Hospital observation and physical examination;
- (iii) Hospital treatment;
- (iv) Outpatient treatment; and
- (v) Furnishing and repair of orthopedic and/or prosthetic appliances.

(2) A veteran pursuing vocational rehabilitation training is entitled to dental examination and treatment, determined necessary to prevent interruption of training or to hasten return to training of a veteran in interrupted or leave status when a cessation of instruction has become necessary because of the condition requiring the

dental treatment. The type and extent of dental treatment will be as determined by a dental officer of the Veterans Administration. All such dental treatment is subject to the provisions of Veterans Administration medical procedures.

(3) Transportation incident to medical services furnished to veterans will be supplied at Veterans Administration expense under the provisions, and subject to the limitations of, applicable Veterans Administration regulations and procedures. (38 U.S.C. 1506)

(4) Any medical examination and immunization needed to qualify a veteran for admission to a training facility will be furnished at Veterans Administration expense. (38 U.S.C. 1501)

(b) *Loans from vocational rehabilitation revolving fund.* (1) A veteran is eligible for loans upon establishing need for vocational rehabilitation and agreement as to the course of training.

(2) No advancement from the revolving fund of more than \$200 shall be made at one time, and in no case shall the total outstanding advancements exceed \$200. Advancements to be made in multiples of \$10 shall be made only upon a showing of necessity and then only to the extent of such need. No interest will be charged on the funds advanced and no additional advancement shall be made to a veteran until the money previously advanced has been repaid in full, except in meritorious cases. (38 U.S.C. 1507; Pub. L. 92-540, 86 Stat. 1074)

(3) The Finance Officer will accept the recommendation of the designated representative in the Vocational Counseling, Training and Adjustment Section unless information is of record indicating that such a recommendation should not be accepted. However, there will be no deviation from the recommendation without prior consultation with that representative.

[24 FR 2043, Mar. 19, 1959, as amended at 30 FR 2705, Mar. 3, 1965; 30 FR 11324, Sept. 3, 1965; 31 FR 16199, Dec. 17, 1966; 38 FR 14930, June 7, 1973]

§ 21.254 Effect of strikes on training status.

A veteran who is prevented from pursuing training because of a strike

against his place of training shall be placed in another suitable place of training is possible whenever it seems that the strike will not be resolved within a reasonable period of time. When another suitable place of training cannot be arranged or when it seems that the strike will be resolved within a reasonable length of time, the veteran may be granted ordinary leave which can be approved. If ordinary leave is found to be inadequate in the individual case, consideration should be given to granting hardship leave.

[30 FR 11324, Sept. 3, 1965]

VOCATIONAL REHABILITATION BOARD

§ 21.256 Types of cases to be referred to the Vocational Rehabilitation Board after counseling.

(a) Cases of veterans will be referred to the Vocational Rehabilitation Board for determination as to the medical feasibility of beginning, continuing or reentering training when:

(1) Medical feasibility for training is questionable, and the medical condition of the veteran is other than temporary in nature; or

(2) The veteran in discontinued status with a finding of general medical infeasibility requests reentrance into training.

(b) The case of a veteran in one of the following classifications will be referred to the Vocational Rehabilitation Board for consideration and recommendation:

(1) A seriously handicapped veteran whose training is not proceeding satisfactorily and the attendant conditions present problems of required adjustment on the part of the veteran or the training facility, or both, which cannot be solved through the usual resources;

(2) A veteran whose reentrance into training after rehabilitation is being considered and advice from the Vocational Rehabilitation Board is desired in determining whether his disability precludes performance of the duties of the occupation for which vocational rehabilitation training was provided.

[24 FR 2045, Mar. 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965]

LEAVES OF ABSENCE

SOURCE: Secs. 21.260 to 21.265 appear at 24 FR 2045, Mar. 19, 1959, unless otherwise noted.

§ 21.260 Introduction.

A veteran in a course of vocational rehabilitation may be granted leave of absence where such leave will not materially interfere with the pursuit of his or her course.

[43 FR 35287, Aug. 9, 1978]

§ 21.261 Ordinary leave.

Ordinary leave will accrue at the rate of 2½ days per month during the entire time the veteran is in training status, including that time during which he or she is on approved leave of absence. Leave will not be accumulated to an amount in excess of 30 days. Accumulated leave will not be forfeited through interruption of training and may be carried over from one period of training to another and from one 12 successive months period of training to another. Similarly, where reentrance into training after rehabilitation or discontinuance is authorized, unused accumulated ordinary leave may be recredited to the veteran's account upon reentrance into training.

(a) *Granting of ordinary leave.* Ordinary leave of absence may be approved, as needed, in excess of amount of leave accrued to the credit of the veteran, but in no case may ordinary leave in excess of an aggregate of 30 days be authorized in any 12 months of training, beginning with the date of the veteran's entrance into training.

(1) The granting of such leave will not materially interfere with the pursuit of the prescribed course; and

(2) Except where the training establishment is not operating full time no ordinary leave will be granted which will require extending the veteran's training beyond 48 months, or further extending the training where in excess of 48 months already has been authorized.

(b) *Charging of ordinary leave.* Approved absences covering a period less than the standard school or work week of the training institution or establishment will be charged at the rate of 1

day for each school or working day of absence from the institution. Approved absences covering a period of 1 calendar week or more will be charged at the rate of 5 days for each 7 consecutive days of absence.

(1) For veterans enrolled in educational institutions, leave may not be authorized nor subsistence allowance paid for any period of more than 1 full calendar month between terms or other periods of instruction within a period of enrollment. When such interim period is 1 full calendar month or less subsistence allowance may be paid and leave will be charged for veterans enrolled in courses not leading to a standard college degree; there will be no charge against leave for veterans enrolled in courses leading to a standard college degree.

(2) If the veteran transfers, with vocational rehabilitation specialist approval, from one approved educational institution to another for the purpose of enrolling in and pursuing a similar course at the second institution during the next consecutive term, and the period between such consecutive terms does not exceed 30 days, such period will not be charged against leave for veterans pursuing a standard college degree program but will be charged against leave for veterans in courses not leading to a standard college degree. Leave may not be authorized, nor subsistence allowance paid, if the interval exceeds 30 days.

(3) If the educational institution certifies the enrollment of the veteran on an individual semester, term or quarter basis and the interval between such periods does not exceed 1 full calendar month, such period will not be charged against leave for veterans pursuing a standard college degree, but will be charged against leave for veterans in courses which do not lead to a standard college degree. Leave may not be authorized, nor subsistence allowance paid, if the interval exceeds 1 full calendar month.

(4) Leave will not be charged for periods where the school is temporarily closed under an established policy based upon an Executive order of the President or due to an emergency situation. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(5) For veterans pursuing on-the-job training, no charge will be made for holidays established by Federal or State law but a charge will be made for periods during which vacations are granted to all employees at the same time; or periods during which the plant is shut down to undergo repairs or because of such things as fuel shortages, strikes, inclement weather, etc.

(6) For veterans pursuing institutional-on-farm training, leave will not be charged for routine absences from the farm required in the ordinary day-to-day conduct of the farm business or for absences from that part of an institutional on-farm course which is given at the educational institution. However, absences which materially interfere with the pursuit of the course or prevent the veteran from receiving the required amount of instruction will be cause for interruption or discontinuance of training.

(7) For veterans in programs of independent study which are not on a semester or quarter basis, leave between designated periods of study may be authorized and will be charged on same basis as leave between terms.

[43 FR 35287, Aug. 9, 1978]

§ 21.262 Additional leave under exceptional circumstances.

Leave of absence in addition to ordinary leave may be approved under the following conditions, provided it is reasonably certain that the veteran will return to the pursuit of his or her course not later than the close of the period for which leave is approvable.

(a) *Personal illness.* When required by reason of bona fide illness of the veteran, sick leave, without regard to ordinary leave, may be granted not to exceed a total of 30 days in each 12 months of training status beginning with the date of the veteran's entrance into training. Sick leave will be charged to include all of the elapsed time from the beginning of absence from training until the veteran returns to training, including Saturdays, Sundays, and holidays, except where the veteran returns on the first day training is available following a week-end or holiday when training was not

available. For example, sick leave will not be charged for a weekend or holiday where the veteran is absent on Friday and returns on Monday following the weekend when training was not available.

(b) *Personal hardship.* (1) After all accrued ordinary leave has been exhausted, additional leave, not to exceed 30 days in each 12 months of training status beginning with the date of the veteran's entrance into training, may be granted for reasons other than personal illness, when failure to do so would cause personal hardship to the veteran. Satisfactory reasons under this category might include illness or death in the veteran's immediate family or other compelling conditions beyond the veteran's control which, in the opinion of the Veterans Administration, make it necessary that the veteran be permitted to absent himself or herself from training. Personal hardship leave will not be granted to cover periods between ordinary school years.

(2) After all accrued ordinary leave has been exhausted, additional sick leave not to exceed 30 days in each 12 months of training status may be granted when it is clear that it could not have been foreseen that the illness would require more than the amount of sick leave which was first approved and when there is clear indication that training will be resumed within the additional period. The basic 30 days' sick leave, together with ordinary leave, generally should be a sufficient allowance for personal illness. A greater period of absence from training ordinarily would interfere with the course.

(3) In no case shall any combination of sick leave, personal hardship leave and additional sick leave, be granted in excess of 60 days during a 12-month period of training. Such leave will be charged to include all of the elapsed time from the beginning of absence from training to the return of the veteran to training, including Saturdays, Sundays, and holidays, except where the veteran returns on the first day training is available, following a weekend or holiday when training was not available, leave will not be charged for such weekend or holiday.

(c) *Training establishment not operating full time.* In addition to ordinary leave not in excess of the amount of leave accumulated to the credit of the veteran, personal hardship leave may be granted for any period of time during which full-time training on the job is not available because the training establishment is operated on a part-time basis or is shut down temporarily when:

(1) It is determined that full-time training will be available within a period of time not to exceed the amount of leave approvable; or

(2) It is determined that the training establishment is operating for approximately the same number of days per month as similar establishments in the general area.

For the purpose of this paragraph, a 5-day week will be considered full time except that full-time training shall be not more than the number of days per week established as the standard work-week for the particular establishment through bona fide collective bargaining between the employers and employees. Also, for the purpose of this paragraph, leave will be charged for each day or fraction thereof on which the establishment is shut down during the standard workweek except that no leave will be charged for legal holidays. When leave under this paragraph is exhausted, subsistence allowance will be deducted for those nonholidays on which the establishment is not operating during the standard workweek. Days for which subsistence allowance is deducted will not be charged against the veteran's time in training.

[24 FR 2045, Mar. 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965; 43 FR 35287, Aug. 9, 1978]

§ 21.263 Maximum leave allowable.

Leave in excess of that authorized will not be approved. Whenever, in an individual case, it becomes evident that the veteran will not be able to resume his training course upon the expiration of the period of leave authorizable, the veteran will be removed from training status.

§ 21.264 Leave following effective date of rehabilitation.

Inasmuch as a veteran is not considered to be pursuing a course of vocational rehabilitation during the 2 months following the effective date of rehabilitation, leave may not be granted during that period even though subsistence is paid. In no case shall the date of rehabilitation be extended beyond the date of the completion of the veteran's course of training for the purpose of allowing the veteran to use his accumulated ordinary leave.

§ 21.265 Unauthorized absences.

Veterans should be instructed that they will be expected to apply for and obtain approval for leave of absence in advance. However, when a veteran has absented himself from his place of training under conditions which make his obtaining advance approval from the Veterans' Administration impracticable, and when the responsible officials of the establishment and the Veterans' Administration agree that the absence has not materially interfered with the course of training, the absence may be excused and proper charges made against the veteran's leave. When such absence from training is not satisfactorily explained, such action as is deemed necessary will be taken, including forfeiture of subsistence allowance for the period of absence.

TRAVEL OF VETERANS

§ 21.266 Intraregional travel of veterans.

A veteran may be provided transportation at Government expense within the regional territory of jurisdiction when it has been determined that such travel is necessary in the discharge of the Government's obligation to the veteran and he is instructed to perform travel for any of the following purposes:

(a) To report to the chosen school or training facility for the purpose of starting training;

(b) To report to a prospective employer-trainer for an interview prior to induction into training where there is definite assurance in advance of approving the travel that, upon interview, the veteran will be started in

training if he is found by the employer-trainer to be acceptable;

(c) To report to the chosen school for personal interview prior to induction into training where the school requires such an interview as a condition of admission. There must be assurance in advance of approving the travel that the veteran's records (school, counseling, etc.) show he meets all basic requirements for entrance and that he has submitted to the school a transcript of his high school credits and a transcript from any school he attended following high school;

(d) To return to his bona fide home from the place of training when training cannot be provided for a period of 30 calendar days or more, provided transportation from his home to the place of training was at Government expense. This will include summer vacation periods when training is not available. It will not include periods when suitable training is available but the veteran elects to interrupt training to return to his home. Where a veteran is authorized under this paragraph to travel at Veterans' Administration expense, return transportation from the veteran's home to the place of training for the purpose of continuing training also may be authorized;

(e) To return to the point from which he was transported at Veterans' Administration expense, upon being placed in status "discontinued" for any reason except fraud on the part of the veteran, or because he abandoned training without good reason. Where a veteran is placed in status "discontinued" because he abandoned training, travel at Veterans' Administration expense to return from the place of training to the point from which the veteran was transported may be authorized if it is determined that the veteran abandoned training for reasons beyond his control;

(f) To report to a place of prearranged satisfactory employment upon completion of vocational rehabilitation for the purpose of beginning work;

(g) To return to his bona fide home from the place of training when, upon completion of vocational rehabilitation, satisfactory employment is not available;

(h) To report to a place to take a scheduled examination in the trade or profession for which he has been trained when the passing of such an examination is necessary to practice his occupation. Such transportation shall be limited to points within the State in which the veteran has pursued his training or, if the veteran returned to the State from which he was sent to pursue training, he may be sent at Government expense to a place within that State to take the examination. If there is more than one place at which the examination may be taken, transportation shall be limited to the nearest place;

(i) To return from the place of training to the place from which he came when travel to the place of training at Government expense was approvable but the necessary travel authorization was not issued.

[24 FR 2046, Mar. 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965]

§ 21.267 Interregional transfers for vocational rehabilitation.

Transfer of a veteran to accomplish vocational rehabilitation may be authorized to the jurisdiction of other regional offices at Government expense when any such transfer is necessary. Transfer at Government expense will be authorized for any one of the following purposes:

(a) To enter training in another regional office area when an adequate facility is not available in the regional office area where the veteran lives. Such a transfer will be limited to the nearest satisfactory training facility except that where regional territorial lines do not coincide with State borderlines, transfers may be effected at Government expense to induct the veteran into training in any satisfactory training facility located within the State of the veteran's residence, despite the existence of satisfactory training facilities within the regional territory;

(b) To return the veteran from the place of training to his bona fide home within the regional office territory from which he was transferred at Government expense to pursue training when training cannot be provided for a period of 30 calendar days or more.

This will include summer vacation periods when training is not available. It will not include periods when suitable training is available but the veteran elects to interrupt training to return to his home. When a veteran is authorized to travel to his home at Government expense, return transportation at Veterans' Administration expense to the place of training for the purpose of continuing training also may be authorized;

(c) To return to the point from which he was transferred at Government expense to pursue training upon having his training discontinued, except when training is discontinued because of fault on the part of the veteran or he abandons training without good cause;

(d) To report to a place of prearranged satisfactory employment to begin work following completion of his course of vocational rehabilitation when there is no satisfactory opportunity for employment in his occupation within the regional territory of his residence, or when such a transfer will be to the definite advantage of the Government;

(e) To return to his bona fide home within the regional territory from which he was transferred at Government expense to pursue training, when upon completion of his course, satisfactory employment is not available;

(f) To return from the place of training to the regional office territory from which he came when transfer to the place of training at Government expense was approvable but the necessary travel authorization was not issued.

[24 FR 2046, Mar. 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965]

§ 21.268 Interregional transfers not at Government expense.

A veteran may transfer for his or her own convenience to attend a training facility other than one located in the State or the regional territory of the veteran's residence upon his or her written request. Any such transfer will not be at the expense of the Government.

(a) A transfer will be for the convenience of the veteran when:

(1) There is a satisfactory facility within the veteran's regional territory or State; or

(2) The nearest satisfactory facility is in another regional territory; and

(3) the veteran wishes training elsewhere because of a personal preference for such things as a particular climate or university.

(b) After a veteran is transferred for his or her own convenience, the expense to the Government of any additional transfer to a satisfactory facility will not be in excess of that which would have been necessary to transfer the veteran to a satisfactory facility originally.

[24 FR 2046, Mar. 19, 1959, as amended at 39 FR 28630, Aug. 9, 1974]

§ 21.274 Authorization for travel for attendants.

(a) The services of an attendant to accompany a veteran while traveling for vocational rehabilitation purposes may be provided when such services are necessitated by the severity of the disability of the veteran.

(b) Persons not in regular civilian employment of the Federal Government may be authorized to act as attendants and will be furnished common-carrier transportation, meal and lodging requests, or, in lieu thereof, will be granted a mileage allowance. Such persons will be paid a fee, except when they are relatives of the veteran. A relative, for this purpose, means a spouse, parent, son or daughter, brother or sister, uncle or aunt, niece or nephew, by blood or marriage. Persons in the regular civilian employment of the Federal Government may be authorized to act as attendants and, when so assigned, will be entitled to transportation and expenses. They may be allowed per diem in lieu of subsistence in accordance with the provisions of Federal Travel Regulations. No fee will be paid to civilian employees of the Federal Government who act as attendants.

[24 FR 2046, Mar. 19, 1959, as amended at 39 FR 28630, Aug. 9, 1974; 40 FR 31757, July 29, 1975]

TUTORING AND READER SERVICE

§ 21.278 Tutoring.

All appropriate individualized tutoring at Government expense may be provided when, for a veteran to be successfully rehabilitated, there is need for special assistance beyond that given to other students pursuing the same or comparable courses.

[40 FR 31757, July 29, 1975]

§ 21.279 Reader service.

(a) Reader service, necessary for the successful pursuit of a course of vocational rehabilitation by a veteran with visual impairment, may be furnished when:

(1) The vision of a veteran in school training is so impaired as to make it impossible or inadvisable to use his or her eyes for reading; or

(2) The visual impairment of a veteran in training on the job where study is required in connection with his or her training is such that need for reader assistance is established.

(b) A veteran considered to have visual impairment necessitating reader service will include:

(1) One whose best corrected vision is 20/200 or less in both eyes;

(2) One whose central vision is greater than 20/200 but whose field of vision is limited to such an extent that the widest diameter of a visual field subtends an angle no greater than 20 degrees; or

(3) One with impaired vision, whose conditions or prognosis indicates that the residual sight will be affected detrimentally by the use of his or her eyes for reading.

(c) The functions of a reader should be more than simply to read mechanically. The reader's services should serve a twofold purpose:

(1) To read printed material with a degree of intelligence commensurate with the importance of the subject matter;

(2) To test the veteran's understanding of what has been read.

(d) The number of hours of service in each case will be determined by the amount of reading necessitated by the course. Reader service is not permissible for reading into a recording ma-

chine not in the veteran's presence for the purpose of making sound recordings of textbook material for his later use. If advance recording of textbooks is desired, the recording service should be obtained through free service offered by volunteer organizations serving that need.

[24 FR 2047, Mar. 19, 1959, as amended at 39 FR 28630, Aug. 9, 1974]

TERMINATION OF TRAINING

SOURCE: Sections 21.280 to 21.284 appear at 24 FR 2047, Mar. 19, 1959, unless otherwise noted.

§ 21.280 Categories.

Terminations of training are classified in four categories: rehabilitated, interrupted, discontinued, and entitlement expired.

§ 21.281 Status "rehabilitated".

(a) A veteran shall be considered employable and declared "rehabilitated," as soon as any one of the following conditions occurs:

(1) The veteran has completed the prescribed course of training, or it is determined the course is longer than necessary and the veteran has completed a sufficient portion of the course to establish clearly that he is employable as a trained worker in his selected occupation. The effective date of rehabilitation will be the day following the day of completion of the prescribed course or the day following the last day of training, whichever is appropriate.

(2) The veteran, while in training status or while properly in interrupted status, accepts employment in the same occupation for which he is being trained or in an occupation for which the training received has contributed materially toward rehabilitation, his earnings approximate those of the average trained worker in the occupation, and the employment is not incompatible with his disability. The effective date of rehabilitation will be the day following the last day of instruction.

(3) The veteran whose training has been interrupted after taking a required examination for license to practice his occupation, has passed the examination. The effective date of reha-

bilitation will be the day following completion of the examination or the day following completion of the course, whichever is later.

(4) The veteran satisfactorily completes a prescribed course of vocational rehabilitation for an occupation the practice of which requires the passing of an examination for licensure and chooses to apply for licensure in a State other than the one in which he pursued his training, or one that he specified at the time he entered training. Under such circumstances, the veteran will be considered to have completed the training necessary to qualify him for employment and the matter of his becoming licensed will not be the responsibility of the Veterans' Administration. The effective date of rehabilitation will be the day following the day of completion of the prescribed course.

(5) The veteran satisfactorily completes a prescribed course of vocational rehabilitation for an occupation the practice of which requires the passing of an examination for licensure but is unable to take the licensure examination prior to the termination date for vocational rehabilitation training. Under such circumstances, the veteran will be considered to have completed the training necessary to qualify him for employment and the matter of his becoming licensed will not be the responsibility of the Veterans' Administration. The effective date of rehabilitation will be the day following the day of completion of the prescribed course.

(b) When a trainee discontinues his training for reasons other than fraud or severance of service connection and it is determined that he has accepted employment in an occupation which is compatible with his disability, he will be placed in status "rehabilitated" the day following the last day of instruction or the day following the last day of leave, whichever is applicable. This action is for record purposes only and the veteran will not receive written notice of rehabilitation and shall not be paid subsistence allowance for the 2 months following determination of employability. The veteran's reentrance into training will not be jeop-

ardized by this recording where reentrance is later found warranted.

(c) A veteran will revert to status "rehabilitated" when his application for reentrance into training following rehabilitation has been approved, but after being properly notified that suitable training is available for him and instructed as to the next step he should take, he

(1) Fails to respond;

(2) Declines or refuses reentrance into training;

(3) Defers reentrance into training for a period exceeding 30 days beyond the scheduled date of reentrance, except where such deferment is due to physical incapacity or other conditions of personal and compelling nature; or

(4) Fails to report and fails to furnish satisfactory reasons for not reporting after receiving notice to report at a designated place and time to recommence training.

[24 FR 2047, Mar. 19, 1959, as amended at 24 FR 4053, May 20, 1959; 30 FR 11324, Sept. 3, 1965]

§ 21.282 Status "interrupted."

A veteran once inducted into training will be expected to pursue his training program to completion without interruption insofar as it is possible for him to do so. Wherever possible, continuous training shall be provided for all veterans, including training during the summer, except where, because of the veteran's physical condition or other good reason, it would not be to his best interest to require him to pursue training during the summer. The effective date of interruption will be the day following the last day of attendance or the day following the last day of approved leave, when training is interrupted by the Veterans' Administration for one of the following reasons:

(a) Training is temporarily not available as, for example, during vacation periods, short "shutdown" periods, et cetera;

(b) Extended personal illness when all leave which may be granted under leave regulations has been exhausted and there is every expectation that the veteran will resume training;

(c) Any other absences from training approved by the Veterans' Administra-

tion where it is clearly indicated that the veteran will return to training and there is no basis for discontinuance;

(d) The veteran completes the prescribed course of vocational rehabilitation for an occupation, the practice of which requires passing of an examination for license and such examination is not given on or before the day following the completion of the course or on or before the day following the last day of approved leave; except where the veteran declines to take the examination in the State for which he was trained, or he is unable to take the licensing examination prior to his termination date;

(e) The veteran has completed his course and has taken a required examination for license to practice the occupation for which he has been trained, and the results of the examination are not available on the day following completion of the examination; or

(f) The veteran withdraws from training to reenter active military service.

§ 21.283 Status "discontinued."

(a) A veteran shall be placed in status "discontinued" effective on the day following the last day of instruction or, where leave was authorized after the last day of instruction, on the day following the last day of leave when it is clearly determined that any one of the following conditions exists:

(1) All reasonable efforts have failed to train the veteran to the point of employability;

(2) Competent medical examination reveals that the veteran will be absent from training to undergo hospital or home treatment for an indefinite period, and the veteran will not be able to return to training within a reasonable period of time;

(3) The veteran fails to cooperate with the Veterans Administration in making necessary adjustment in his program of vocational rehabilitation, including refusal to participate in revaluation procedure;

(4) Action has been suspended on revaluation because of noncooperation on the part of the veteran;

(5) The veteran fails to avail himself properly of the training provided as follows: His misconduct prevents progress toward his employment objective or ultimate placement in employment. He willfully violates the regulations of the institution or establishment in which placed for training, or his conduct is insubordinate or disorderly at any place of training. He voluntarily withdraws from training for reasons other than physical condition or excused interruptions. He leaves the area and has his records transferred to another regional office without having made prior arrangements with the Veterans Administration for the continuation of his vocational rehabilitation training in the new area of jurisdiction;

(6) It is established that the determination of eligibility or need for vocational rehabilitation is based on fraud, error of law, confusion of names, or misfiling of papers, or that the veteran never had a service-connected disability, or that fraud was practiced in any application for training or for subsistence allowance.

(7) The veteran in status "interrupted" after being properly notified that suitable training is available for him and instructed as to the next step he should take:

(i) Fails to respond;

(ii) Declines or refuses reentrance into training;

(iii) Defers reentrance into training for a period exceeding 30 days beyond the scheduled date of reentrance, except where such deferment is due to physical incapacity or other conditions of personal and compelling nature; or

(iv) Fails to report and fails to furnish the Veterans Administration satisfactory reasons for not reporting after receiving notice to report at a designated place and time to commence training.

(8) The veteran in status "interrupted" while back in military service is released from service and fails for a period of more than 60 days to apply for reentrance into training.

(b) A veteran in status "discontinued" after having his application for reentrance into training approved, and being properly notified that suitable training is available for him and in-

structed as to the next step he should take will revert to discontinued status when he:

(1) Fails to respond;

(2) Declines or refuses reentrance into training;

(3) Defers reentrance into training for a period exceeding 30 days beyond the scheduled date of reentrance, except where such deferment is due to physical incapacity or other conditions of personal and compelling nature; or

(4) Fails to report and fails to furnish the Veterans Administration satisfactory reasons for not reporting after receiving notice to report at a designated place and time to commence training.

(c) In all cases of discontinuance of training, the facts, together with evidence justifying the discontinuance, shall be ascertained and recorded.

[24 FR 2047, Mar. 19, 1959, as amended at 30 FR 11324, Sept. 3, 1965]

§ 21.284 Status "entitlement expired".

A veteran shall be placed in status "Entitlement Expired" on the day following his termination date under the law when he is properly in training or in interrupted status on his termination date.

REENTRANCE INTO TRAINING

§ 21.286 Reentrance after rehabilitation.

When, subsequent to an official declaration of rehabilitation, a veteran whose disability rating has not been reduced to less than a compensable degree, requests further training, the declaration of rehabilitation may be canceled and the veteran reentered into training if it is determined that:

(a) The declaration of rehabilitation is no longer valid because, although at the time of the declaration the veteran was able to function satisfactorily in the occupation for which he was trained, current facts, including Veterans Administration medical findings, show that, in the meantime, the veteran's service-incurred disability has worsened to the extent that the disability precludes his performing the duties of the occupation for which he was trained;

(b) The declaration of rehabilitation was not valid at the time it was made because the training given was inadequate to render the veteran employable in the occupation for which he pursued training; or

(c) The declaration of rehabilitation was not valid because subsequent experience has demonstrated that employment in the objective for which the veteran was trained could not reasonably have been expected and such employment is not now available.

[24 FR 2048, Mar. 19, 1959]

§ 21.287 Reentrance after interruption.

(a) A veteran who has been properly placed in "interrupted" status and presents himself for reentrance into training at the appointed time, will be reentered into training even though there has been a reduction in his disability rating to less than a compensable degree during the period of interruption.

(b) A veteran whose training was interrupted to await the time of licensure examination will be reentered for the time required to take the examination but not for the time required to receive the report of results of the examination.

(c) A veteran in "interrupted" status who fails to report for reentrance at the appointed time will be handled in accordance with the principles governing reentrance into training after discontinuance.

[24 FR 2048, Mar. 19, 1959, as amended at 30 FR 11325, Sept. 3, 1965]

§ 21.288 Reentrance after discontinuance.

When a veteran whose training was discontinued, applies for reentrance into training, reentrance will be accomplished when:

(a) The reasons for discontinuance have been removed;

(b) The veteran still has a disability rating of a compensable degree; and

(c) Need for vocational rehabilitation is reestablished. Where the veteran has been in "discontinued" status to undergo medical treatment for an indefinite period and he applies for reentrance within 30 days of the date he is able to resume training as determined by competent medical examina-

tion, need will be considered to be established and he will not be referred to Counseling unless there exists some other compelling reason for such referral.

[24 FR 2048, Mar. 19, 1959]

ASSISTING VETERANS IN OBTAINING EMPLOYMENT

§ 21.290 Veterans Administration responsibility.

The primary responsibility of the Veterans Administration in its vocational rehabilitation program is to restore employability lost by virtue of the handicap of a service-incurred disability—to fit the disabled veteran for employment consistent with the degree of disablement. The best proof that employability has been restored is a showing that the veteran actually has been placed in suitable employment. To accomplish this:

(a) Every training program will have as its goal the actual employment of the veteran in the selected employment objective.

(b) Services of the appropriate State employment agency will be used to the fullest extent possible in assisting rehabilitated veterans to obtain suitable employment upon completion of their prescribed courses. Not less than 60 days prior to the anticipated date of rehabilitation it will be ascertained whether the veteran needs and desires employment assistance. If he desires such assistance, he will be referred to the appropriate employment agency. If he does not desire assistance in obtaining employment, he will not be referred to the employment agency and his records will be documented accordingly.

(c) Direct employment placement assistance will be provided in cooperation with the State employment agency, for those veterans who may be expected to encounter difficulty in obtaining suitable employment. If by the date of rehabilitation the veteran has not been employed or assured of employment, every reasonable effort to get the veteran employed will be continued until the veteran is suitably placed or until it is determined that all resources available to the regional

office have been fully explored and developed and that there is little likelihood that continued efforts will result in placement.

(d) In order to assure that the vocational rehabilitation benefits afforded the disabled veteran are as effective as possible, followup assistance will be provided after the veteran obtains employment in each case where, on the basis of knowledge of the veteran and understanding of his needs and problems, it is determined that such assistance is required. Followup assistance will include the observing of the veteran's performance in competitive employment and will be continued for a period of time necessary to determine that there is reasonable assurance that he has made a satisfactory employment adjustment.

(e) Where the seriously handicapped veteran who has been rehabilitated and suitably employed, loses his employment through no fault on his part, further employment placement assistance, in cooperation with the State employment service will be provided.

[24 FR 2049, Mar. 19, 1959]

§ 21.291 Assisting a disabled veteran in obtaining sheltered employment.

When it is determined that the limiting effects of the veteran's disability are such that he cannot engage in or be trained for competitive employment, and training for sheltered employment is not required; the training officer will provide employment placement assistance needed by the veteran to find a suitable job in a sheltered employment environment.

[24 FR 2049, Mar. 19, 1959]

COUNSELING

§ 21.700 Counseling disabled veterans.

(a) Counseling will be provided each disabled veteran who has basic eligibility for vocational rehabilitation and applies for training. The principal purpose of counseling will be to assist each veteran who needs vocational rehabilitation training to select a suitable vocational objective and plan for its achievement. Counseling psychologists will apply approved counseling principles and techniques in accord-

ance with professional standards and practices.

(b) Counseling will be provided to assist a veteran in overcoming problems of personal adjustment which may interfere with his or her achieving, or deriving maximum benefit from, vocational rehabilitation. Such assistance will be provided by counseling psychologists whenever needed prior to entering training, while pursuing training, or in adjusting to employment following training.

(c) Each eligible disabled veteran who is homebound or hospitalized will be provided such counseling service as may be found appropriate to his or her physical or mental condition. This service will be provided through visits to the home of the veteran or through consultation with psychological and other personnel at Veterans Administration hospitals.

[40 FR 31757, July 29, 1975]

§ 21.701 Need for vocational rehabilitation.

(a) A veteran having basic eligibility for whom training to employability is found medically and otherwise feasible may be afforded training if he or she is found in need of vocational rehabilitation because of the handicap of his or her service-connected disability.

(b) A veteran who has a service-connected disability of compensable degree which resulted from service in the Armed Forces on or after September 16, 1940, will be presumed to be in need of vocational rehabilitation. However, a veteran will be held not in need of training, if it is determined through counseling that the veteran's service-connected disability causes no limitations on potential employability or, if such limitations exist that he or she is employed or fully qualified for employment in a suitable occupation. An occupation in which a disabled veteran is employed or in which he or she could obtain and hold employment will be considered suitable when the following criteria are met;

(1) The occupation is one which is pursued by workers in the locality where the veteran resides; and

(2) The veteran can meet the requirements of the occupation with no

great likelihood of aggravating the disability; and

(3) The occupation is one in which a trained worker normally pursues employment and earns a livelihood; and

(4) Job requirements are such that a period of training (over and beyond vestibule training) is required to secure and hold employment in it; and

(5) The occupation is consistent with the veteran's aptitudes, abilities, interests, and capacities.

(c) The determination as to whether a disabled veteran is in need of vocational rehabilitation will be made by counseling psychologists in Veterans Services Divisions in field stations.

[43 FR 35287, Aug. 9, 1978]

§ 21.705 Noncooperation of disabled veterans.

When a disabled veteran fails or refuses to cooperate in the counseling process to the extent required to determine need for vocational rehabilitation or medical feasibility of training, or refuses to select an employment objective which is considered suitable for vocational rehabilitation purposes, action will be suspended on his or her application until his or her cooperation can be obtained.

[40 FR 31757, July 29, 1975]

§ 21.711 Redeterminations as to need.

(a) *Prior to induction into training.* When a determination has been made that a disabled veteran needs vocational rehabilitation, this decision will not be changed unless there is (1) unmistakable error of fact or law; or (2) there is new and material evidence which justifies a change. This will apply to determinations made by counseling psychologists in Veterans Services Divisions while on authorized visit to a Veterans' Administration hospital as well as to determinations made at other Veterans' Administration counseling locations. When a veteran requests induction into vocational rehabilitation training after having declined such training, or after a determination was made that he or she did not need such training, a redetermination as to need will be made in order to consider whether conditions

basic to such determination have changed.

(b) *After induction into training.* (1) A redetermination as to need for vocational rehabilitation will be made upon recommendation under § 21.286 or § 21.288 for a veteran who requests further training after rehabilitation or discontinuance.

(2) A redetermination as to need for vocational rehabilitation will not be made because of a change in compensation rating, including a reduction to zero percent, while the veteran is pursuing vocational rehabilitation training.

[30 FR 11325, Sept. 3, 1965, as amended at 40 FR 31757, July 29, 1975]

§ 21.712 Revaluation—additional counseling.

Additional counseling will be provided when there is reason to question the suitability of the chosen employment objective, or when other counseling assistance is needed. When a new objective is to be selected the conditions and criteria for approving a change of objective contained in Veterans' Administration regulations will be observed. A redetermination as to need for vocational rehabilitation will not be made for a veteran while in training or while in training interrupted status.

[30 FR 11325, Sept. 3, 1965]

§ 21.715 Seriously handicapped veterans.

(a) It is the policy of the Veterans' Administration to bring all applicable specialized resources effectively to bear upon the vocational rehabilitation of seriously handicapped veterans. To this end, the field station will utilize the services of staff specialists of the nearest Department of Medicine and Surgery clinic or hospital as well as of the Veterans Services and Adjudication Divisions. For this purpose the station head will establish a Vocational Rehabilitation Board comprised of a counselor as chairman; a vocational rehabilitation specialist; a medical consultant; and a member of the Social Service Staff. Other Department of Medicine and Surgery staff specialists will participate as consultants in individual cases when-

ever the Board has need of their services.

(b) The Board, operating as a coordinated team, will be responsible for the following functions as appropriate:

(1) Make a determination as to the medical feasibility of training.

(2) Formulate a program for utilizing available resources to improve the veteran's condition where temporary or indefinite medical infeasibility is found, for purpose of enabling the veteran to undertake or reenter training as soon as possible.

(3) Provide assistance in the development of an effective vocational rehabilitation plan for a veteran for whom training is found to be medically feasible.

(c) When medical infeasibility is found by the Board, further action regarding vocational rehabilitation will be suspended until there is sufficient improvement in the veteran's condition to warrant referral to the Board for reconsideration as to the medical feasibility of training. The veteran or his or her designated representative will be informed of such suspension, and of the right of appeal.

[30 FR 11325, Sept. 3, 1965, as amended at 39 FR 43219, Dec. 11, 1974; 40 FR 31757, July 29, 1975]

§ 21.716 Determining whether medical infeasibility prevented timely entrance into or completion of training.

A determination that a veteran is entitled to an extension of time to pursue vocational rehabilitation training because he or she was prevented from timely entering or completing such training because of a physical or mental condition may be made by a counseling psychologist after consultation with the medical consultant. In all cases where an affirmative determination is not made by the counseling psychologist, the matter will be referred to the Vocational Rehabilitation Board. Where the Board's decision is unfavorable, the veteran will be informed of the decision and of his or her right to appeal.

[39 FR 43219, Dec. 11, 1974]

§ 21.720 Severance of service connection—reduction of disability rating.

When a veteran loses basic entitlement to vocational rehabilitation due to severance of service connection or reduction of his or her disability rating to less than compensable degree he or she may not be provided counseling. This will apply even though the veteran may continue to receive compensation until the end of the month in which 60 days after the date of notice to him or her expires. Counseling will not be precluded, however, where a reduction in rating to less than compensable degree is scheduled for a specified future date, if a compensable rating will continue beyond the end of the month in which 60 days after the date of notice of reduction expires.

[39 FR 43219, Dec. 11, 1974]

§ 21.728 Travel expenses for counseling purposes.

When a disabled veteran having basic eligibility for vocational rehabilitation is requested to report to a designated place for counseling, including personal or vocational adjustment counseling, travel to and from the place of counseling will be at Government expense. Payment of travel expense will be made either on the basis of actual necessary expense of transportation, meals, and lodging or as an allowance based upon the mileage traveled. When a veteran because of a severe disability requires the services of an attendant while traveling, payment of travel expenses for the attendant is authorized on the same basis as for the veteran.

[30 FR 11325, Sept. 3, 1965]

§ 21.735 Counseling services on contract basis.

(a) *Authorization.* Directors of regional offices and centers are authorized to negotiate and approve contracts with educational institutions and other approved counseling agencies for the purpose of providing educational and vocational counseling to persons referred for such services by the Veterans Administration. Referrals will generally consist of persons

eligible for educational assistance under 38 U.S.C. chapter 35; seriously disabled veterans will not be referred to guidance centers. See 41 CFR 8-75.201-13.

(b) *Veterans Administration guidance centers.* A decentralized location where counseling services are provided under contract to supplement the counseling services available in field stations will be designated at Veterans Administration guidance center. A Veterans Administration counselor will be assigned to represent the Veterans Administration at each guidance center.

[30 FR 11325, Sept. 3, 1965, as amended at 39 FR 43219, Dec. 11, 1974]

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

AUTHORITY: 72 Stat. 1114, 80 Stat. 12 (38 U.S.C. 210, 1651-1687).

NOTE: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, "these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 1666."

GENERAL

§ 21.1020 Educational assistance.

As used in Subparts B and D of this part, references to educational assistance, programs and courses include apprentice or other on-the-job training pursued in a training establishment as defined in § 21.4200(c).

(a) *General.* A program of education may be authorized for a veteran whose service meets the requirements of § 21.1040.

(b) *45 Months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, except as specified in § 21.1041.

(c) *Training in a foreign country.* A course to be pursued at a school not located in a State may not be approved except under the circumstances outlined in § 21.4260.

[31 FR 6771, May 6, 1966, as amended at 32 FR 5271, Mar. 29, 1967; 32 FR 13402, Sept. 23, 1967; 43 FR 35288, Aug. 9, 1978]

§ 21.1021 Definitions.

(a) "Eligible veteran" or "veteran" means a veteran whose service meets the requirements of § 21.1040. Unless otherwise specifically identified the terms include a person on active duty who has basic eligibility for educational assistance under the provisions of § 21.1040(e).

(b) "Active duty" means active duty as defined in § 3.6(b), except (b)(4) of this chapter. It also includes the initial period of active duty for training in the Reserves or National Guard pursuant to Section 511(d), title 10, United States Code, served subsequent to January 31, 1955 provided that at some time subsequent to the completion of such period of active duty for training the veteran serves on active duty for a consecutive period of 1 year or more (excluding service as a cadet or midshipman at one of the service academies). (38 U.S.C. 1652(a)(3), 1682(b)). See §§ 21.1040, 21.1042, and 21.4136. This term does not include periods of excess leave without pay.

(c) "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Canal Zone (38 U.S.C. 101(20); Pub. Law 89-358).

(d) "Educational assistance allowance" includes training assistance allowance based on apprentice or other on-the-job training. (38 U.S.C. 1684)

(e) "Unit" means not less than one hundred and twenty 60-minute hours or their equivalent of study in any high school subject in 1 academic year. (38 U.S.C. 1788)

[31 FR 6771, May 6, 1966, as amended at 35 FR 9812, July 17, 1970; 40 FR 31758, July 29, 1975; 44 FR 62494, Oct. 31, 1979]

CROSS REFERENCE: *Measurement of courses.* See § 21.4270(a).

§ 21.1022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

A person who is eligible for educational assistance under chapter 34 and is also eligible for vocational rehabilitation under chapter 31 or educational

assistance under chapter 35 must elect which benefit he or she will receive. The election is subject to the conditions specified in § 21.4022.

[40 FR 31758, July 29, 1975]

§ 21.1025 Nonduplication; Federal programs.

Educational assistance is subject to the restrictions contained in § 21.4025 with respect to a veteran who is pursuing a course of education or training under a Federal program (38 U.S.C. 1781).

[31 FR 6771, May 6, 1966; 31 FR 11454, Aug. 31, 1966]

CLAIMS

§ 21.1030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the veteran in order for an educational assistance allowance to be paid. In addition servicemen or servicewomen must consult with their service education officer before applying for educational assistance (38 U.S.C. 1671).

[39 FR 43220, Dec. 11, 1974]

§ 21.1031 Informal claims.

(a) Any communication from a veteran, an authorized representative or a Member of Congress indicating an intent to apply for educational assistance may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be sent to the veteran for execution. If received within 1 year after the date it was sent to the veteran, it will be considered filed as of the date of receipt of the informal claim.

(b) The act of enrolling in an approved school does not in itself constitute an informal application.

[31 FR 6771, May 6, 1966; 31 FR 11454, Aug. 31, 1966]

§ 21.1032 Time limits.

The provisions of this section are applicable to original applications, formal or informal, and to applications for increased educational assistance al-

lowance by reason of the existence of a dependent.

(a) *Completion of claim.* The Veterans Administration will consider a claim to be abandoned when the Veterans Administration requests evidence in connection with a claim, and the veteran does not furnish the evidence within 1 year after the date of the request. After the expiration of 1 year, the Veterans Administration will not take further action unless a new claim is received. (38 U.S.C. 3003(a))

(b) *New claim.* Where an application has been considered abandoned, any subsequent communication which meets the requirements of an informal claim will be considered a new application. The date of receipt of such later communication will be considered the date of application.

(c) *Failure to furnish claim or notice of time limit.* Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

(d) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.1043 must be received by the Veterans Administration by the latest of the following dates:

(1) November 23, 1978,

(2) One year from the date on which the veteran's original period of eligibility ended,

(3) One year from the date on which the veteran's physical or mental disability ceased to prevent him or her from beginning or resuming the veteran's chosen program of education. (38 U.S.C. 1662)

[38 FR 14930, June 7, 1973, as amended at 39 FR 43220, Dec. 11, 1974; 44 FR 62494, Oct. 31, 1979; 45 FR 67092, Oct. 9, 1980]

CROSS REFERENCES: Due process; procedural and appellate rights with regard to disability and death benefits and related relief. See § 3.103 of this chapter.

Computation of time limit. See § 3.110 of this chapter.

ELIGIBILITY AND ENTITLEMENT

§ 21.1040 Basic eligibility.

Basic eligibility for educational assistance for persons training under chapter 34, title 38, United States Code, including chapter 36 to the extent applicable, is subject to the following requirements:

(a) *Service.* An eligible veteran is a person with active duty service, including travel time which meets the requirements of § 3.6(b)(6) of this chapter, who has either:

(1) Served on active duty for a continuous period of 181 days or more, any part of which occurred on or after February 1, 1955, and before January 1, 1977,

(2) Served on active duty for a continuous period of 181 days or more, as a result of a contract with the Armed Forces in a program such as the DEP (Delayed Enlistment Program), or an ROTC (Reserve Officer's Training Corps) program for which a person enlisted in, or was assigned to, a reserve component prior to January 1, 1977, any part of which period of active duty commenced within 12 months after January 1, 1977, or

(3) Served on active duty for a period of less than 181 days any part of which period was performed, either after January 31, 1955 and before January 1, 1977 or if pursuant to a contract as provided in paragraph (a)(2) of this section, after January 1, 1977 and was discharged or released because of a service-connected disability. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383)

(b) *Periods excluded.* In computing the 181 days service, there will be excluded any period during which he or she:

(1) Was assigned full time by the service department to a civilian school for a course of education which was substantially the same as established courses offered to civilians;

(2) Served as a cadet or midshipman at one of the service academies;

(3) Served under the provisions of 10 U.S.C. 511(d) in an enlistment in the Army National Guard or the Air National Guard, or as a reservist in the Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve; or

(4) Is not entitled to credit for service for the periods of time specified in § 3.15 of this chapter.

(c) *Periods excluded; Korean conflict veterans.* Where a veteran has received education or training under the Veterans' Readjustment Assistance Act of 1952, Title II, or 38 U.S.C. Chapter 33 (as in effect before Feb. 1, 1965) as a Korean conflict veteran based on service which extended beyond January 31, 1955, the months of service after January 31, 1955, which were previously used to establish eligibility for the education or training received will be excluded in determining the period of entitlement for educational assistance under chapter 34.

(d) *Discharge or release.* (1) The veteran must have received an unconditional discharge or release under conditions other than dishonorable from the period of service on which eligibility is based.

(2) The Veterans Administration will consider that the veteran has received an unconditional discharge or release if

(i) The veteran was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met. See also § 3.12 of this chapter on character of discharge. (38 U.S.C. 101)

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he or she:

(1) Meets the requirements applicable to a discharged veteran under paragraphs (a), (b), and (d) of this section, or

(2) Meets the requirements of paragraphs (a) and (b) of this section, and has served a total of 181 days or more on active duty, any part of which occurred on or after February 1, 1955, excluding periods of time specified in § 3.15 of this chapter. Educational assistance otherwise payable may be provided under this subparagraph so long as he or she continues on active duty, or

(3) Has completed 181 consecutive days or more of active duty, any part of which was on or after February 1,

1955, while such assistance is provided under § 21.4235(a)(1). (38 U.S.C. 1652, 1695(b); Pub. L. 91-219, 84 Stat. 76; Pub. L. 91-584, 84 Stat. 1575)

[31 FR 6771, May 6, 1966, as amended at 34 FR 840, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 40 FR 31758, July 29, 1975; 43 FR 35288, Aug. 9, 1978; 45 FR 59312, Sept. 9, 1980]

CROSS REFERENCES: *Duty periods.* See § 3.6(b) of this chapter.

Persons included. See § 3.7 of this chapter.

§ 21.1041 Periods of entitlement.

(a) *General.* (1) A veteran with less than 18 months active duty service or a person on active duty who meets the requirements of § 21.1040 will be entitled to full-time educational assistance for a period not in excess of 45 months computed on the basis of 1½ months (or the equivalent in part-time educational assistance) for each month or fraction of a month of service on active duty on or after February 1, 1955 up to and including the date of the veteran's first discharge or release after December 31, 1976, if he or she was in the active military service on December 31, 1976, or has eligibility as provided in § 21.1040(a)(2). First discharge or release means the first such discharge or release wherein the person is eligible for complete separation from active duty. There will be excluded from the period of entitlement the periods specified in § 21.1040 (b) and (c).

(2) A veteran who has served a continuous period of not less than 18 months of active duty on or after February 1, 1955, and who has been released from such service under conditions that satisfied his or her active duty obligation, will be entitled to full-time educational assistance for a period of 45 months (or the equivalent in part-time educational assistance). Service on or after January 1, 1977 may be included up to and including the date of the veteran's first discharge or release after December 31, 1976 if he or she was in the active military service on December 31, 1976 or has eligibility based upon section 1652(a)(1)(B), title 38, United States Code (§ 21.1040(a)(2)). The periods specified in § 21.1040(b) will be ex-

cluded in computing the 18 months period.

(3) The veteran may use his or her entitlement at any time during the 10-year period, including any applicable extension of it, determined under §§ 21.1042 and 21.1043, but in no event shall education or training be afforded a veteran under chapter 34 or 36 after December 31, 1989. It is not required that the entitlement time be used in consecutive months. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(4) The 45 months limitation may be exceeded where an extension is authorized under paragraph (d) of this section, or where no charge against entitlement is made based on a course or courses pursued at a secondary school level, as provided in § 21.1045(a), pursued by a veteran under the Program of Special Assistance for the Educationally Disadvantaged or by a serviceman or servicewoman under the Pre-discharge Education Program, or pursued by a spouse, or surviving spouse under the Special Assistance for the Educationally Disadvantaged program. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383)

(b) *Prior Veterans' Administration training.* The period of entitlement for educational assistance when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance, except as provided in paragraph (a)(4) of this section. A reduction in the period of entitlement by reason of prior training will be computed as provided in paragraph (c) of this section.

(c) *Reduction for prior Veterans Administration training.* Where the period of entitlement is subject to reduction by reason of prior training the period remaining after subtracting the period of prior training will be converted to months and quarter fractions of a month. Periods of less than a month will be converted to quarter fractions as follows:

- 1 to 7 days, inclusive—one-fourth month.
- 8 to 15 days, inclusive—one-half month.
- 16 to 23 days, inclusive—three-fourths month.
- 24 to 31 days, inclusive—full month.

(d) *Extension.* The period of entitlement, including the 45-months period, may be extended, but not beyond the delimiting date specified in §§ 21.1042 and 21.1043: (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(1) To the end of a term, quarter or semester in a school regularly operated on a term, quarter or semester system, when the period of entitlement ends during the term, quarter or semester.

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that \$806 will provide for flight training and \$871 will provide for correspondence training, whichever is less. (38 U.S.C. 1661; 1677(b); 1786(a); Pub. L. 95-202, 91 Stat. 1433)

(3) No extension of the period of entitlement will be made where training is pursued in a training establishment as defined in § 21.4200.

(4) A veteran may elect to reimburse the Veterans Administration for educational assistance paid to him or her for one or more intervals between terms, quarters or semesters and have entitlement restored for as many intervals as necessary to allow payment of educational assistance for one additional term, quarter or semester through an extension. Before the veteran can reimburse the Veterans Administration and receive additional educational assistance, all of the following conditions must be met:

(i) Payment for the interval or intervals must have been made without specific request from the student;

(ii) The payment checks for the interval or intervals must have been negotiated;

(iii) The election is to the advantage of the veteran;

(iv) The veteran has not previously made such an election; reimbursed the Veterans Administration; and received an extension. Entitlement for intervals must be repurchased sequentially be-

ginning with the most recent interval for which payment was made without the student's request. (38 U.S.C. 1661))

[31 FR 6771, May 6, 1966, as amended at 34 FR 840, Jan. 18, 1969; 43 FR 35288, Aug. 9, 1978; 44 FR 23219, Apr. 19, 1979; 44 FR 62494, Oct. 31, 1979]

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be determined as follows:

(a) *General.* Except as otherwise provided in this section and as provided by § 21.1043, no educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955 or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662)

(b) *Correction of military records.* If the veteran becomes eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, educational assistance will not be afforded later than 10 years after the date his or her discharge or dismissal was changed, corrected or modified (except as provided by § 21.1043), or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

(c) *Initial eligibility—(1) Discharge or release before June 1, 1966.* Where eligibility is based on a discharge or release from active duty before June 1, 1966, educational assistance will not be afforded later than May 31, 1976.

(2) *Discharge or release before August 31, 1967.* Where eligibility is based on a discharge or release from active duty before August 31, 1967, educational or training assistance based on a course of apprentice or other on-the-job training, flight training, or farm cooperative training approved under the provisions of § 21.4261, 21.4262, 21.4263 or 21.4264 will not be afforded later than August 30, 1977. (38 U.S.C. 1662; Pub. L. 94-502, 90 Stat. 2383)

(d) *Eligibility based on completion of an obligated period of active duty.* A veteran's eligibility may be based

solely on a completion of an obligated period of active duty followed by discharge considered to be unconditional under § 3.13(c) of this chapter. When this occurs, the Veterans Administration shall not afford the veteran an educational assistance allowance after October 8, 1987 or 10 years after the veteran completed the qualifying period of active duty unless the veteran qualified for a later ending date pursuant to § 21.1043. In no event, however, shall the Veterans Administration furnish educational assistance allowance after December 31, 1989. (38 U.S.C. 101, 1662)

(e) *Eligibility established after the Veterans Administration determines the character of discharge.* If a veteran receives an undesirable discharge, or a bad conduct discharge, but is entitled to educational assistance allowance because the Veterans Administration determines pursuant to § 3.12 of this chapter that the discharge was under conditions other than dishonorable, the last date on which educational allowance may be afforded shall be determined as follows:

(1) If the veteran's discharge is under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date the veteran was discharged, no educational assistance shall be afforded after the dates set forth in paragraph (a) or (c) of this section, as appropriate.

(2) If the veteran was discharged prior to October 8, 1977, and his or her discharge is considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date of his or her discharge, but is considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted after October 7, 1977, educational assistance shall not be afforded after October 7, 1987 unless the veteran qualifies for a later date pursuant to § 21.1043. In no event, however, shall such a veteran receive educational assistance allowance after December 31, 1989.

(3) A veteran may have his or her eligibility arise under paragraph (b) of this section, and then lose eligibility

under that paragraph, because a later review by an appropriate military authority revealed that the change, correction or modification was not in accordance with historically consistent, uniform standards and procedures. If such a veteran having been in receipt of educational assistance, reestablishes his or her eligibility through the Veterans Administration's determination that the veteran's discharge was under conditions other than dishonorable, no educational assistance shall be afforded later than:

(i) Ten years from the date of discharge or dismissal if the veteran's discharge would have been considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date he or she was discharged or dismissed.

(ii) Ten years from the first date of training for which the veteran received educational assistance if the veteran's discharge or dismissal would have been considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written on the date the veteran was discharged or dismissed, but is considered to have been under conditions other than dishonorable pursuant to § 3.12 of this chapter as that section was written after October 7, 1977. In no event, however, shall such a veteran receive educational assistance allowance after December 31, 1989. (38 U.S.C. 1662, 3103)

(f) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the day preceding the end of the 10-year period, or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662)

(g) *Periods excluded.* There shall be excluded in computing the 10-year period of eligibility for educational assistance under this section, any period during which the eligible veteran subsequent to his or her last discharge or release from active duty was captured and held as a prisoner of war by a foreign government or power plus any period immediately following the veteran's release from detention during

which he or she was hospitalized at a military, civilian, or Veterans Administration medical facility, provided:

(1) The veteran served on or after February 1, 1955, and

(2) The veteran was eligible for educational assistance under the provisions of chapter 34 of chapter 36 of title 38, United States Code. (38 U.S.C. 1662)

[43 FR 35289, Aug. 9, 1978, as amended at 44 FR 62494, Oct. 31, 1979; 45 FR 59312, Sept. 9, 1980]

§ 21.1043 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.1042 provided:

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(3) The veteran is otherwise eligible for payment of educational assistance for the training pursuant to chapter 34, title 38, United States Code. (38 U.S.C. 1662, Pub. L. 95-202, 91 Stat. 1433)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen:

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.1042, and

(2) Must be on or before the ninetieth day following the date on which the veteran's application for an extension was approved by the Veterans Administration, if the veteran is training

during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first ordinary term, quarter or semester following the ninetieth day after the veteran's application for an extension was approved by the Veterans Administration if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.1042, or

(iii) The date the veteran resumed training. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible or

(ii) The veteran's delimiting date as determined by § 21.1042. (38 U.S.C. 1662(a)(1); Pub. L. 95-202, 91 Stat. 1433)

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of an extended period of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the

day preceding the end of the extended period of eligibility. (38 U.S.C. 1662; Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62494, Oct. 31, 1979]

§ 21.1045 Entitlement charges.

(a) *Residence courses*—(1) *High school courses; chapter 34.* No charge will be made against a veteran's entitlement based on a course pursued on or after June 1, 1966, at a secondary school level under the circumstances outlined in § 21.4235. Any charge made against such veteran's entitlement because of pursuit of a course at a secondary school level between June 1, 1966, and September 30, 1967, both dates inclusive, will be restored. (38 U.S.C. 1696(c); Pub. L. 91-219, 84 Stat. 76)

(2) *Flight training courses; Chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each \$288 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{2}$, $\frac{1}{4}$ or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Pub. L. 95-202, 91 Stat. 1433)

(3) *Other courses; chapter 34.* Except as provided in paragraphs (a) (1) and (2) of this section, and except where the courses are pursued under the program of Special Assistance for the Educationally Disadvantaged or the PredischARGE Education Program, charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the veteran is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time, or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or other than exactly three-quarters, one-half, or one-quarter fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month.

(4) *Chapter 35.* Except as provided in paragraph (a)(5) of this section, charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the eligible person is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month.

(5) *Secondary school training; Chapter 35 Spouse or Surviving Spouse.* No charge will be made against the entitlement of a spouse or surviving spouse based on a course pursued under the circumstances outlined in § 21.4237, Special Assistance for the Educationally Disadvantaged. (38 U.S.C. 1733)

(6) *Excessive absences and less than full payment for job training.* Where deductions are made throughout an enrollment period, the combined portions of a month for which deductions were made will be computed and no entitlement charge will be made for the combined deductions. Where the computation results in a period of time other than a full month, or other than exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be raised to the next higher quarter fraction of a month.

(b) *Correspondence courses*—(1) *High school courses.* The provisions of paragraph (a)(1) of this section, except to servicemen or servicewomen on active duty, and paragraph (a)(5) of this section are applicable to correspondence courses at a secondary school level.

(2) *Other courses.* Except as provided in paragraph (b)(1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for

each \$175 paid to the veteran as an educational assistance allowance for such course, for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the period of entitlement of any eligible veteran, spouse, or surviving spouse, who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each \$220 paid before September 1, 1974, to the veteran, spouse, or surviving spouse as an educational assistance allowance for such course. For payments made on or after September 1, 1974, the charge will be 1 month for each \$260 paid; for payments made on or after January 1, 1975, the charge will be 1 month for each \$270 paid; for payments made on or after October 1, 1976, the charge will be 1 month for each \$292 paid; and for payments made on or after October 1, 1977, the charge will be 1 month for each \$311 paid. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 95-202, 91 Stat. 1433)

(c) *Less than half-time.* A charge against the period of entitlement for a program of education pursued at less than half-time will be made on the basis of one-fourth of the elapsed time during which the course is pursued.

(d) *Active duty.* A charge against the period of entitlement for a program of education pursued by a veteran, serviceman or servicewoman on active duty will be made on the basis of the credit hours for which enrolled or clock hours of attendance, except that no charge against entitlement will be made where the courses are pursued under the program of Special Assistance for the Educationally Disadvantaged or the Predischarge Education program. See § 21.4270.

(e) *Elapsed time.* The elapsed time will be computed from commencing date of enrollment to date of discontinuance on the basis of full calendar months and quarter fractions of a month. The fractional months are those periods other than full calendar months at the beginning and end of the enrollment period. These partial

months will be converted to fractions of a month, or to full months, in accordance with the following table. No charge will be made for any quarter month in which the full quarter was not utilized.

Commencing date of enrollment, sec. 21.4131	Elapsed time	Date of discontinuance, sec. 21.4135	Elapsed time
1st day of month.	Full month.....		
2d to 7th, inclusive.	$\frac{1}{4}$ month.....	1st to 7th day of month inclusive.	No charge.
8th to 15th inclusive.	$\frac{1}{2}$ month.....	8th to 15th, inclusive.	$\frac{1}{2}$ month.
16th to 23d, inclusive.	$\frac{3}{4}$ month.....	16th to 23d, inclusive.	$\frac{3}{4}$ month.
24th to 31st, inclusive.	No charge.....	24th to day before end of month, inclusive. Last day of month.	$\frac{1}{4}$ month Full month.

(f) *Overpayment cases.* Entitlement will be charged for an overpayment in educational assistance allowance only if the overpayment is discharged in bankruptcy, is waived and is not recovered, or is compromised.

(1) The charge against entitlement, if the overpayment is discharged in bankruptcy or is waived and is not recovered, will be at the appropriate rate for the elapsed period covered by the overpayment.

(2) The charge against entitlement, if the overpayment is compromised, will be determined by:

(i) Subtracting the accepted compromise offer from the total amount of the overpayment;

(ii) Dividing the result obtained in paragraph (f)(2)(i) of this section by the total amount of the overpayment; and

(iii) Multiplying the percentage figure obtained in paragraph (f)(2)(ii) of this section by the amount of entitlement which represents the whole overpaid period. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{4}$, $\frac{1}{2}$, or $\frac{3}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1661)

(g) *Interruption to conserve entitlement.* A certified period of enrollment may not be interrupted for the purpose of conserving entitlement. Nor may a period of enrollment be certified for a fractional part of the normal term, quarter or semester if the eligible veteran is actually enrolled for the term, quarter or semester. Entitlement will be charged for the entire period of enrollment certified, if otherwise eligible for benefits, except when benefits are interrupted under any one of the following conditions:

(1) Enrollment is actually terminated;

(2) Enrollment is canceled and no educational benefits check has been negotiated for any part of the certified period of enrollment;

(3) Enrollment is interrupted at the scheduled end of any term, quarter, semester or school year within the certified period of enrollment and no check for educational benefits has been negotiated for the succeeding term, quarter, semester or school year;

(4) Interruption or cancellation is requested for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive order of the President or due to any emergency situation whether or not a check for educational benefits for the certified period has been negotiated.

(h) *Accelerated payment; chapter 34 and chapter 35.* The entitlement of a veteran or eligible person who receives an accelerated payment will be charged at the rate of 1 month for each amount of accelerated payment (exclusive of the matching payment from the State and-or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{2}$, $\frac{1}{3}$, or $\frac{1}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(i) *Education loan after otherwise applicable delimiting date; chapter 34*

or chapter 35 spouse or surviving spouse. A charge will be made against the entitlement of a veteran, spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 month for each month of entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. Where the computation results in a period of time other than a full month, or other than exactly $\frac{1}{2}$, $\frac{1}{3}$ or $\frac{1}{4}$ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1662, 1712; Pub. L. 95-202, 91 Stat. 1433)

[31 FR 6771, May 6, 1966, as amended at 35 FR 9813, June 16, 1970; 38 FR 14931, June 7, 1973; 38 FR 23948, Sept. 5, 1973; 39 FR 31902, Sept. 3, 1974; 43 FR 35289, Aug. 9, 1978; 43 FR 52486, Nov. 13, 1978; 44 FR 62495, Oct. 31, 1979]

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

AUTHORITY: 72 Stat. 1114, 1193, as amended (38 U.S.C. 210, 1700-1766).

GENERAL

§ 21.3020 Educational assistance.

The program of educational assistance under 38 U.S.C. ch. 35 captioned *Survivors' and Dependents' Educational Assistance*, may be referred to as *Dependents' Educational Assistance*. (Sec. 309, Pub. L. 94-502, 90 Stat. 2383)

(a) *General.* A program of education or special restorative training may be authorized for an eligible person who meets the definition contained in § 21.3021.

(b) *45 months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c). (38 U.S.C. 1711(a), 1733, 1741(b); Pub. L. 94-502, 90 Stat. 2383)

(c) *Courses in foreign countries.* A course to be pursued at a school not

located in a State or in the Philippines may not be approved except under the circumstances outlined in § 21.4260.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 841, Jan. 18, 1969; 38 FR 14931, June 7, 1973; 43 FR 35289, Aug. 9, 1978]

§ 21.3021 Definitions.

(a) "Eligible person" means:

(1) A child of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability.

(iii) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(iv) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(2) The surviving spouse of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability, arising out of active military, naval or air service after the beginning of the Spanish-American War. (See §§ 3.6(a) and 3.807 of this chapter.)

(3) The spouse of a:

(i) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(ii) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(b) "Child" means a son or daughter of a veteran as defined in § 3.807(d) of this chapter. The term includes a child of a Philippine Commonwealth Army

veteran and a Philippine Scout (designated as a "New" Philippine Scout under 38 U.S.C. 1766(b)), as defined in § 3.8(b), (c), or (d) of this chapter, but educational assistance allowance may not be authorized based on such service for any period before September 30, 1966.

(c) "Wife" and "widow", "spouse" and "surviving spouse." The terms "wife" and "widow" mean an individual as defined in § 3.807(d) of this chapter and the terms "spouse" and "surviving spouse" shall have the same respective meaning when used in the regulations in Part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968. (38 U.S.C. 1700, 1701, and 1711; Pub. L. 94-502, 90 Stat. 2383)

(d) "Parent or guardian" means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 1701(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 1701(b)) The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be designated as the person by whom required actions should be taken. (38 U.S.C. 1701(c))

(e) "Armed Forces", as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 1701 (a)(3) and (d))

and 1712(a)) Effective December 31, 1970, the term includes the National Oceanic and Atmospheric Administration, the Environmental Science Services Administration and the Coast and Geodetic Survey, as to full-time duty of officers commissioned therein. (38 U.S.C. 101(21)(C); Pub. L. 91-621, 84 Stat. 1863)

(f) "Duty with the Armed Forces", as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 1701(a)(3) and (d), 1712(a)) See §§ 21.3041 and 21.3042.

(g) "State" means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20)) (Although the Republic of the Philippines is not included in the definition of a State, eligible persons may pursue courses of training in that country.)

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978]

CROSS REFERENCES: *Duty periods.* See § 3.6 of this chapter.

Persons included. See § 3.7 of this chapter.

Philippine and insular forces. See § 3.8 of this chapter.

§ 21.3022 Nonduplication; 38 U.S.C. chapters 31, 34 and 35.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for vocational rehabilitation under 38 U.S.C. chapter 31 or educational assistance under chapter 34, must elect which benefit he or she will receive. The election is subject to the conditions specified in § 21.4022.

[40 FR 42879, Sept. 17, 1975]

§ 21.3023 Nonduplication; pension, compensation and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity

compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Child; under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) *Child; election.* The commencement of a program of education constitutes an election.

(1) Except as provided in paragraph (c)(2) of this section, an election is

final when the payee has negotiated one check for this benefit.

(2) An election based on erroneous information furnished by an authorized representative of the Veterans Administration is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of educational assistance may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.

(d) *Wife, husband, widow or widower.* Educational assistance allowance may be paid for an eligible wife, husband, widow or widower concurrently with pension, compensation or dependency and indemnity compensation.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 842, Jan. 18, 1969; 40 FR 42879, Sept. 17, 1975]

CROSS REFERENCES: Discontinuance. See § 3.503(n) of this chapter.

Concurrent payments. See § 3.707 of this chapter.

Certification. See § 3.807 of this chapter.

§ 21.3024 Nonduplication; Federal Employees' Compensation Act.

(a) *Civilian employment.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based on the disability or death as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) *Child, wife, husband, widow or widower.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive.

(2) *Veteran, wife, husband and child; widow, widower and child.* An eligible person may receive educational assistance notwithstanding that the Office

of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, widow or widower.

(3) *Election.* An election of Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Veterans Administration benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a widow, or widower filed on or after December 1, 1968, is a bar to subsequent payments of Veterans Administration benefits during the period of concurrent eligibility.

(b) *Military service.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) *Child, wife, husband, widow or widower.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) *Veteran, wife, husband and child; widow, widower and child.* An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, widow, or widower.

[40 FR 42879, Sept. 17, 1975]

CROSS REFERENCE: Federal Employees' Compensation. See § 3.708 of this chapter.

§ 21.3025 Nonduplication; Federal programs.

Educational assistance is subject to the restrictions contained in § 21.4025 with respect to an eligible person who is pursuing a course of education or

training under a Federal program. (38 U.S.C. 1781)

[31 FR 6773, May 6, 1966]

CLAIMS

§ 21.3030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person in order for educational assistance allowance or special restorative training allowance to be paid. (38 U.S.C. 1713; Pub. L. 94-502, 90 Stat. 2383)

[43 FR 35290, Aug. 9, 1978]

§ 21.3031 Informal claims.

(a) Any communication from a spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person, an authorized representative or a Member of Congress indicating an intent to apply for educational assistance for an eligible person may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person for execution. If received within 1 year after the date it was sent to the spouse, surviving spouse, parent of a child or the child having attained legal majority, or the guardian of an eligible person, it will be considered filed as of the date of receipt of the informal claim. (38 U.S.C. 1713; Pub. L. 94-502, 90 Stat. 2383)

(b) The act of enrolling in an approved school does not in itself constitute an informal application.

[31 FR 6771, May 6, 1966, as amended at 43 FR 35290, Aug. 9, 1978]

§ 21.3032 Time limits.

(a) *Completion of claim*—(1) *Processing time*. If, after filing application, the eligible child, for other than a reason determined by the Veterans Administration to have been beyond his or her control, fails to report for a scheduled counseling appointment or

fails to submit an educational plan within 60 days after the date on which a counseling certificate is executed, the application will be considered abandoned for the purpose of computing processing time. If the eligible child reports after the 60-day period but within 1 year of filing application, the date of reporting for counseling will be considered the appropriate date from which to compute processing time.

(2) *Claim or request for change*. When required counseling is delayed by an eligible person for 12 or more months, for other than a reason beyond his or her control, the application or request for change of program will be considered abandoned.

(3) *Reopening*. Where an application has been considered abandoned under paragraph (a)(2) of this section, any subsequent communication from the parent, guardian or eligible person requesting a program of education will be considered a new application. The date of receipt of such later communication will be considered the date of application.

(b) *Failure to furnish claim or notice of time limit*. Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

(c) *Time limit for filing a claim for an extended period of eligibility*. A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the later of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability ceased to prevent him or her from beginning or resuming a chosen program of education. (38 U.S.C. 1712)

[30 FR 15632, Dec. 18, 1965, as amended at 39 FR 43220, Dec. 11, 1974; 44 FR 62495, Oct. 31, 1979]

CROSS REFERENCES: Due process; procedural and appellate rights with regard to disability and death benefits and related relief. See § 3.103. Computation of time limit. See § 3.110.

ELIGIBILITY AND ENTITLEMENT

§ 21.3040 Eligibility; child.

(a) *Commencement.* A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling.* "Completion of secondary schooling" means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement.* No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of § 21.3021 (a)(1)(iv) and (3)(ii).

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(e)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.

[30 FR 15632, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 39 FR 38227, Oct.

30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978]

§ 21.3041 Periods of eligibility; child.

(a) *Basic beginning date.* The eligible person's 18th birthday or successful completion of secondary schooling, whichever first occurs. See paragraph (b) of this section and § 21.3040(a) and (b).

(b) *Exceptions to basic beginning date.* (1) Person has passed compulsory school attendance under applicable State law, or

(2) Person has passed 14th birthday and has physical or mental handicap. See § 21.3040(a).

(c) *Basic ending date.* The eligible person's 26th birthday.

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d) (1) to (7) of this section and 10 years in paragraph (d)(8), whichever is later. Where the ending date is subject to modification under more than one of paragraph (d)(3), (4), (5), (6) or (7) of this section the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

(1) Effective date of permanent total rating of veteran-parent or the date of notification to him or her of such rating, whichever is the more advantageous to the eligible person. (38 U.S.C. 1712)

(2) Death of veteran-parent.

(3) Date of first unconditional discharge or release from "duty with the Armed Forces" served as an eligible person if he or she served after age 18 and before age 26. See § 21.3042.

(4) Enactment of Pub. L. 88-361 on July 7, 1964, providing eligibility based on permanent total disability; that is, July 6, 1969.

(5) Enactment of Pub. L. 89-349 on November 8, 1965, providing eligibility based on peacetime service after the Spanish-American War and prior to September 16, 1940; or during World War I or World War II solely by reason of the provisions of 38 U.S.C. 301; that is, November 7, 1970.

(6) Enactment of Pub. L. 89-613 on September 30, 1966, providing eligibility based on service with the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter; that is, September 29, 1971. See § 3.807 of this chapter.

(7) Effective date of Pub. L. 90-77, section 307, October 1, 1967, providing eligibility for persons solely by virtue of that section who were over age 23 and below age 26 on that date; that is September 30, 1972.

(8) Enactment of Pub. L. 92-540 (86 Stat. 1074) on October 24, 1972, providing for a course of apprentice or other on-the-job training approved under the provisions of § 21.4261 or 21.4262; that is, October 24, 1982 or until age 31, whichever is earlier.

(e) *Extensions to ending dates.* (1) Suspension of program due to conditions determined by the Veterans Administration to have been beyond the person's control (see § 21.3043); extended for length of period of suspension, but not beyond age 31. See § 21.3040(d).

(2) Period of eligibility as specified in paragraph (c) or (d) of this section ends while enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester, or for courses at educational institutions operated on other than a quarter or semester system, if the period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs. Extension may be authorized beyond age 31, but may not exceed maximum entitlement. See § 21.3044(a). No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(a)(5); Pub. L. 94-502, 90 Stat. 2383)

(3) Child is enrolled and eligibility ceases because veteran is no longer rated permanently and totally disabled; extended to date specified in paragraph (e)(2) of this section without regard to whether the midpoint of

the quarter, semester or term has been reached. See § 21.4135(o).

(4) Child is enrolled and eligibility ceases because the member of the Armed Forces upon whose service eligibility is based is no longer listed by the Secretary concerned in any of the categories specified in § 21.3021(a)(1)(iv); extended to date specified in paragraph (e)(2) of this section without regard to whether the midpoint of the quarter, semester or term has been reached. See § 21.4135(o).

[30 FR 15632, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 31 FR 13993, Nov. 2, 1966; 32 FR 13402, Sept. 23, 1967; 34 FR 842, Jan. 18, 1969; 39 FR 38228, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978]

§ 21.3042 Service with Armed Forces.

(a) No educational assistance under chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.4135(n). (38 U.S.C. 1701(d)) For chapter 34 benefits see § 21.4235.

(b) If the eligible person served with the Armed Forces, his or her discharge or release from each period of service must have been under conditions other than dishonorable. (38 U.S.C. 1701(d))

(c) The term "unconditional discharge", as used in § 21.3041 means unconditional discharge or release from duty with the Armed Forces. See § 3.13 of this chapter.

(d) For the eligible child called to active duty after July 30, 1961, and before August 1, 1962, by (1) an order issued to him or her as a Reserve or (2) an extension of an enlistment, appointment or period of duty pursuant to section 2 of Pub. L. 87-117, 75 Stat. 242 ("Berlin Crisis"), the extended period under § 21.3041 will be further extended by the number of months and days served during such period.

[30 FR 15633, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 41 FR 42929, Nov. 1, 1976]

§ 21.3043 Suspension of program; child.

For an eligible person who suspends his program due to conditions determined by the Veterans Administration to have been beyond his or her control the period of eligibility may, upon his request, be extended by the number of months and days intervening the date the suspension began and the date the reason for suspension ceased to exist. The burden of proof is on the eligible person to establish that suspension of a program was due to conditions beyond his or her control. The period of suspension shall be considered to have ended as of the date of the person's first available opportunity to resume training after the condition which caused it ceased to exist. The following circumstances may be considered as beyond the eligible person's control:

(a) While in active pursuit of a program of education he or she is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his or her program of studies.

(b) Immediate family or financial obligations beyond his or her control require the eligible person to take employment, or otherwise preclude pursuit of his or her program.

(c) Unavoidable conditions arising in connection with the eligible person's employment which preclude pursuit of his or her program.

(d) Pursuit of his or her program is precluded because of the eligible person's own illness or illness or death in his or her immediate family.

(e) Active duty, including active duty for training in the Armed Forces.

[41 FR 47929, Nov. 1, 1976]

§ 21.3044 Entitlement.

(a) Each eligible person is entitled to educational assistance for a period not in excess of 45 months, or the equivalent thereof in part-time training. No extension of entitlement will be authorized except as provided in paragraph (c) of this section. The period of

entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which subsistence allowance was paid after determination of employability following vocational rehabilitation. Where the period of entitlement is subject to reduction by reason of prior training the period of prior training will be converted to months and quarter fractions of a month before subtracting this period from the period of entitlement. In the conversion process a period of prior training less than a full month will be converted by using the table in § 21.1041(c).

(b) The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program in the period of 45 consecutive months.

(c) The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the Special Assistance for the Educationally Disadvantaged program. (See § 21.4237); or

(2) Where special restorative training authorized under § 21.3300 exceeds 45 months.

[43 FR 35290, Aug. 9, 1978]

CROSS REFERENCE: *Special restorative training.* See § 21.3300.

§ 21.3045 Entitlement charges.

Charges against the period of entitlement of an eligible person pursuing a program of education will be made in accordance with § 21.1045 (a) through (c) and (e) through (i).

[39 FR 31902, Sept. 3, 1974, as amended at 44 FR 62495, Oct. 31, 1979]

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (c) and (d) of this section. If eligibility arises before October 24, 1972, educational

assistance based on a course of apprenticeship or other on-the-job training, or correspondence approved under the provisions of §§ 21.4256, 21.4261 and 21.4262 will not be afforded later than October 23, 1982 unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(a) *Spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) If the permanent total rating is effective on or after December 1, 1968, or the notification to the veteran of such rating was on or after that date, the beginning date of the 10-year period of eligibility is the effective date of the rating or the date of notification, whichever is more advantageous to the spouse.

(3) If eligibility arises under § 21.3021(a)(3)(ii) the beginning date of the 10-year period is December 24, 1970, or the date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(b) *Surviving spouses.* (1) If the veteran's death occurred before December 1, 1968, the beginning date of the 10-year period is December 1, 1968.

(2) If the veteran's death occurred on or after December 1, 1968, the beginning date of the 10-year period is the date of death.

(c) *Extension to ending date.* Spouse is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2), or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 12 weeks, whichever is earlier. In a course pursued exclusively by correspondence, the period of eligibility will be extended to the end of

the course or for the total additional amount of instruction that \$871 will provide, whichever is less. No extension may exceed maximum entitlement or extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. Extension is authorized without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made when training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

(1) Veteran is no longer rated permanently and totally disabled.

(2) Spouse is divorced from veteran without fault on her or his part.

(3) Spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii). (38 U.S.C. 1711(b), 1712(b), 1732, 1786; Pub. L. 94-502, 90 Stat. 2383; Pub. L. 95-202, 91 Stat. 1433)

(d) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a). All other provisions of § 21.1043 concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility. (38 U.S.C. 1712(b); Pub. L. 95-202, 91 Stat. 1433)

[43 FR 35291, Aug. 9, 1978, as amended at 44 FR 62495, Oct. 31, 1979]

SPECIAL RESTORATIVE TRAINING

§ 21.3300 Special restorative training.

(a) Special restorative training may be prescribed where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible person to pursue a program of education. Medical care and treatment or psychiatric treatment are not included.

(b) The Vocational Rehabilitation Board may prescribe for special restorative training purposes such courses as speech and voice correction or retention, language retraining, speech (lip) reading, auditory training, Braille

reading and writing, training in ambulation, one-hand typewriting, nondominant handwriting, personal, social and work adjustment training, remedial reading, and such other training deemed necessary.

(c) Special restorative training may be provided in excess of 45 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment in excess of \$98 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b); 1742; Pub. L. 95-202, 91 Stat. 1433)

(d) Special restorative training will not be provided in Veterans Administration facilities. (38 U.S.C. 1741(b), 1742; Pub. L. 93-508, 88 Stat. 1578; Pub. L. 93-602, 88 Stat. 1957)

[30 FR 15645, Dec. 18, 1965, as amended at 44 FR 62495, Oct. 31, 1979]

§ 21.3301 Need.

(a) When the case of a handicapped person is referred to the Vocational Rehabilitation Board, because of a request by a parent or guardian or upon recommendation of a counselor, the board will determine whether:

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) It is in the best interests of an eligible person to begin special restorative training after having reached his or her 14th birthday;

(3) Upon completion of special restorative training the eligible person should be able to pursue a program of education;

(4) The special restorative training may be pursued concurrently with a program of education; and

(5) Training is medically feasible.

(b) Where the board decides that special restorative training is needed, the Vocational Counseling, Training and Adjustment Section will develop and implement a training course suited to the needs and capacities of the eligible person.

(c) Where a parent or guardian has requested special restorative training on behalf of an eligible person and the board finds that such training is not needed or is not medically feasible, the

parent or guardian will be informed of the action taken.

(d) When the case of an eligible person is referred for consideration of reentrance into special restorative training following an interruption, the board will recommend approval if it is found that training is medically feasible and there is reasonable expectation that the purpose of special restorative training may be accomplished. See § 21.3306.

[30 FR 15645, Dec. 18, 1965, as amended at 40 FR 31759, July 29, 1975]

§ 21.3302 Agreements.

(a) Agreements may be made with public or private educational institutions or others to provide special restorative training for an eligible person as may be suitable and necessary.

(b) Where a customary tuition charge is not applicable the agreement will include the fair and reasonable amounts which may be charged the parent or guardian for the training provided an eligible person.

(c) Each agreement will contain the same type of information as required for special restorative training for disabled veterans under 38 U.S.C. Chapter 31, including the requirement that educational institutions, or others with whom arrangements have been made, report to the Veterans Administration promptly the enrollment, interruption or termination of the eligible person's course of special restorative training.

[30 FR 15645, Dec. 18, 1965, as amended at 31 FR 6774, May 6, 1966]

§ 21.3303 Extent of training.

Ordinarily special restorative training may not exceed 9 months. However, where it is determined that more than 9 months is necessary the program will be referred to Central Office for prior approval. Where the plan for a program of special restorative training of itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to Central Office for approval. The limitation at age 31 may not be

exceeded. A course of special restorative training will be prescribed on a full-time basis as determined in each individual case in accordance with one of the following requirements:

(a) The course will require devotion of that amount of time per week which is commonly devoted to a full-time course at an educational institution in each case where, based on medical findings, it is determined that the physical or mental condition of the eligible person will permit the devotion of that amount of time to his or her training.

(b) The course will require devotion of the maximum amount of time per week which is determined by medical findings to be commensurate with the limitations imposed by the eligible person's disability in each case where medical authority determined that, due to such limitations, the time he or she should devote to his or her course is less than the amount of time indicated in paragraph (a) of this section.

(c) If the hours that can reasonably be devoted to the elements of needed restorative training per week will not of themselves equal the amount of time required by paragraph (a) or (b) of this section, the course will be supplemented with subject matter which will contribute toward the ultimate objective of a program of education.

[30 FR 15645, Dec. 18, 1965, as amended at 43 FR 35291, Aug. 9, 1978]

§ 21.3304 Assistance during training.

(a) In all cases of special restorative training, there will be close supervision to assure satisfactory progress, and, when needed, proper and timely adjustments. In the process of supervision two factors in particular must be kept in mind:

(1) Unless the course is properly provided both in kind and amount the eligible person's chances for ultimate successful completion of a program of education are jeopardized.

(2) Because all time spent in a course of special restorative training is subtracted from the time the law allows for a program of education, there must not be any waste of time or prolonging of the course of special restorative training beyond that necessary

to accomplish the purpose of such training.

(b) Supervision will as a minimum consist of the following:

(1) Knowledge as to the progress of the eligible person at all times.

(2) The assisting of the eligible person and his or her instructor in all matters affecting training.

(3) A continuing alertness to discover any new developments which may affect progress and the exertion of every effort to forestall or remove any disadvantageous factors.

(4) The maintaining of adequate records of the progress of the eligible person. This will include records of the eligible person's attendance, personal conduct, and application to the course.

(c) When in the process of supervision it is determined that adjustments are needed in the course or in the training situation immediate action will be taken to bring about such adjustments in accordance with the following:

(1) When the eligible person or his or her instructor indicates dissatisfaction with elements of the program through personal discussion with the eligible person and/or his or her instructor, there will be effected if possible a correction of the difficulty through such means as making minor adjustments in the course or by persuading the eligible person to give more attention to performance.

(2) When it develops that there are difficulties of major significance which cannot be corrected a report of all pertinent facts together with recommendations will be prepared and submitted to the Vocational Rehabilitation Board for proper action.

(3) When in process of supervision it is determined that the eligible person is making progress much faster than was anticipated and it is clear that his or her course may be terminated with satisfactory results short of the time originally planned, action will be taken to terminate the course at the proper time so that the eligible person's entitlement to an educational program may be conserved.

(d) As long as the eligible person is making satisfactory progress toward the established objective of overcoming

ing the effect of his or her handicap, the eligible person will be continued in his or her course of training without accounting for days of nonattendance within his or her authorized enrollment. However, in any instance where the eligible person's progress toward his or her objective is unsatisfactory or because of his or her negligence, lack of application or misconduct, his or her progress is being materially retarded his or her course of instruction will be interrupted.

[30 FR 15645, Dec. 18, 1965, as amended at 43 FR 35291, Aug. 9, 1978]

§ 21.3305 Status "interrupted".

(a) An eligible person once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each such eligible person, including training during the summer, except where, because of his or her physical condition or other good reason, it would not be to his or her best interest to pursue training during the summer.

(b) Special restorative training will be interrupted as necessary under the following conditions:

(1) During summer vacations or periods when no instruction is given before and after summer sessions.

(2) During a prolonged period of illness or medical infeasibility.

(3) When the eligible person voluntarily abandons special restorative training.

(4) When the eligible person fails to make satisfactory progress in the special restorative training course.

(5) When the eligible person is found to be no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.

[30 FR 15645, Dec. 18, 1965, as amended at 43 FR 35292, Aug. 9, 1978]

§ 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible person presents himself for reentrance, action will be taken as follows:

(a) Where special restorative training was interrupted for a scheduled vacation period, for a short period of illness or for other reason which does not prevent reentrance in the same course of special restorative training without corrective action, reentrance will be approved.

(b) Where special restorative training was interrupted by reason of failure to maintain satisfactory conduct or progress or for any other reason which requires corrective action, such as change of place of training, change of course, personal adjustment, etc., the case will be referred to the Vocational Rehabilitation Board for action.

(1) If it is determined that the conditions for which interruption action was taken can be overcome, the board will recommend the means by which adjustment in the case is to be made.

(2) If all efforts by the board to bring about proper adjustment in the case meet with failure and the board determines that adjustment cannot be made, the board will notify the Vocational Counseling, Training and Adjustment Section that reentrance is denied and that discontinuance action is to be taken. Such discontinuance will preclude any further pursuit of special restorative training under 38 U.S.C. Chapter 35; therefore, action to discontinue should be taken only as a last resort and after all facts lead to the conclusion that there is no warrant to continue special restorative training. In any case of discontinuance the guardian or legal custodian will be notified in writing of the action taken. He will also be informed of potential rights to a program of education.

[30 FR 15645, Dec. 18, 1965]

PAYMENTS; SPECIAL RESTORATIVE TRAINING

§ 21.3330 Payments.

(a) Payments will be made to the person designated to receive the payments under the provisions of § 21.4139.

(b) The special training allowance will be paid only for the period of the eligible person's approved enrollment as certified by the vocational rehabilitation specialist. In no event, however,

will such allowance be paid for any period during which:

(1) The eligible person is not pursuing the prescribed course of special restorative training that has been determined to be full-time training with respect to his or her capacities.

(2) An educational assistance allowance is paid.

(c) The following regulations governing the payment of educational assistance allowance apply to the payment of special restorative training allowance:

(1) Section 21.4140, *Apportionment*;

(2) Section 21.4141, *Offsets; pension, compensation, and dependency and indemnity compensation*.

[30 FR 15646, Dec. 18, 1965, as amended at 31 FR 6774, May 6, 1966; 40 FR 31759, July 29, 1975]

§ 21.3331 Commencing dates.

The commencing date of an authorization of a special training allowance will be the date of entrance or reentrance into the prescribed course of special restorative training, or the date the Vocational Rehabilitation Board approved such course for the eligible person, whichever is later. See also § 21.4131.

[31 FR 6774, May 6, 1966]

§ 21.3332 Discontinuance dates.

Special training allowance will be discontinued as provided in this section on:

(a) The ending date of the course, the ending date of the period of enrollment as certified by the vocational rehabilitation specialist, the ending date of the period of eligibility, or the expiration of the eligible person's entitlement, whichever occurs first.

(b) Date of interruption of course as determined by the vocational rehabilitation specialist under § 21.3305.

(c) Date of discontinuance under the applicable provisions of § 21.4135.

[30 FR 15646, Dec. 18, 1965, as amended at 31 FR 6774, May 6, 1966]

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section:

Course	Monthly rate	Accelerated charges
Special Restorative Training.	\$311	If costs for tuition and fees average in excess of \$98 per month, rate may be increased by such amount in excess of \$98.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each \$10.40 that the special training allowance exceeds the basic monthly rate of \$311. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less, will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742; Pub. L. 95-202, 91 Stat. 1433)

(c) *Payments in Philippine pesos.* Special training allowance will be payable at a rate in Philippine pesos equivalent to \$0.50 for each dollar authorized in those instances in which:

(1) Entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter; or

(2) The training is pursued at an institution located in the Republic of the Philippines. (38 U.S.C. 1732, 1742, 1765; Pub. L. 91-219, 84 Stat. 76)

[35 FR 9814, June 16, 1970, as amended at 44 FR 62496, Oct. 31, 1979]

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

SOURCE: 31 FR 6774, May 6, 1966, unless otherwise noted.

ADMINISTRATIVE

§ 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Education and Rehabilitation Service designated by him or her to make findings and decisions

under 38 U.S.C. Chapters 34, 35, and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.

(b) Authority is delegated to the Chief Benefits Director and the Director, Education and Rehabilitation Service to enter into agreements for reimbursement of State approving agencies under § 21.4135.

(c) Authority is delegated to the Director, Education and Rehabilitation Service, to exercise the functions required of the Administrator for: (1) Waiver of penalties for conflicting interests as provided by § 21.4005;

(2) Actions otherwise required of State approving agencies, under § 21.4150(c);

(3) Approval of courses under § 21.4250(c).

(d) The Chief Benefits Director is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education and special restorative training to implement title VI, Civil Rights Act of 1964. Authority is delegated to him or her and designee to take any necessary action as to programs of vocational rehabilitation, education or special restorative training under 38 U.S.C. Chapters 31, 34, 35 and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Administrator has delegated responsibility for various schools or training establishments to implement Part 18 of this chapter.

(e) The Chief Benefits Director is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field stations under his or her jurisdiction.

(f) The Chief Benefits Director is delegated responsibility to enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, to carry out investigations and make determinations as to enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading

either by actual statement, omission, or intimation. (38 U.S.C. 1796; Pub. L. 93-508, 88 Stat. 1578)

[31 FR 6774, May 6, 1966, as amended at 37 FR 10442, May 23, 1972; 40 FR 31759, July 29, 1975; 43 FR 3707, Jan. 28, 1978]

§ 21.4002 Finality of decisions.

(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Veterans Administration as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 21.4003. (See §§ 19.153 and 19.154 of this chapter.)

(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for a program of education or special restorative training, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

§ 21.4003 Revision of decisions.

The revision of a decision on which an action was predicated will be subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter;

(b) Difference of opinion, § 3.105(b) of this chapter;

(c) Character of discharge, § 3.105(c) of this chapter;

(d) Severance of service connection, § 3.105(d) of this chapter;

(e) Veteran no longer totally and permanently disabled, § 21.4135(o).

§ 21.4005 Conflicting interests.

(a) *General.* (1) Every officer or employee of the Veterans Administration who has, while such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 38 U.S.C. Chapters 32, 34, 35, or 36 will

be immediately dismissed from his or her office or employment.

(2) If the Administrator finds that any person who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under chapters 32, 34, 35, or 36, payments under § 21.4153 to such State approving agency will be discontinued unless such agency takes, without delay, such steps as may be necessary to terminate the employment of such person and payments will not be resumed while such person is an officer or employee of the State approving agency, or State Department of Veterans' Affairs or State Department of Education.

(3) A State approving agency will not approve any course offered by a school operated for profit and, if any such course has been approved, will disapprove each such course, if it finds that any officer or employee of the Veterans Administration, or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or service from, such school.

(4) The Administrator may, after reasonable notice, and public hearings if requested, waive in writing the application of this paragraph in the case of any officer or employee of the Veterans Administration or of a State approving agency, if it is found that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee (38 U.S.C. 1783).

(b) *Waiver.* (1) Where a request is made for waiver of application of paragraph (a)(1) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of the Veterans Administration, if the officer or employee:

(i) Acquired his or her interest in the school by operation of law, or

before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(a) His or her position involves no policy determinations, at any administrative level, having to do with matters pertaining to payment of educational assistance allowance, or special training allowance.

(b) His or her position has no relationship with the processing of any veteran's or eligible person's application for education or training.

(c) His or her position precludes him or her from taking any adjudicative action on individual applications for education or training.

(d) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 38 U.S.C. Chapters 32, 34, 35, or 36.

(e) His or her position is not connected with the processing of claims by, or payments to, schools, or students enrolled therein under the provisions of 38 U.S.C. Chapters 32, 34, 35, or 36.

(f) His or her work is not connected in any way with the inspection, approval, or supervision of schools desiring to train veterans or eligible persons.

(2) Where a request is made for waiver of application of paragraph (a) (2) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of a State approving agency, if the officer or employee:

(i) Acquired his or her interest in the school by operation of law, or before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(a) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection

with 38 U.S.C. Chapters 32, 34, 35, or 36.

(b) His or her work is not connected in any way with the inspection, approval, or supervision of schools desiring to train veterans or eligible persons.

(c) *Authority.* (1) Authority is delegated to the Director, Education and Rehabilitation Service, and to the field station head in cases of Veterans Administration employees under his ~~office~~ jurisdiction, to waive the application of paragraph (a) (1) of this section in the case of any Veterans Administration employee who meets the criteria of paragraph (b) (1) of this section and to deny requests for waiver which do not meet such criteria. If the circumstances warrant, the request may be submitted to the Administrator for decision.

(2) Authority is delegated to the Director, Education and Rehabilitation Service, in cases of State approving agency employees to waive the application of paragraph (a)(2) of this section in the case of any such person who meets the criteria of paragraph (b)(2) of this section and to deny requests for waiver which do not meet such criteria. If the circumstances warrant, the request may be submitted to the Administrator for decision.

(3) Authority is reserved to the Administrator to waive the requirement of paragraphs (a) (1) and (2) of this section in the case of an officer of the Veterans Administration or a State approving agency and in the case of any employee of either who does not meet the criteria of paragraph (b) of this section.

(d) *Disapproval of courses.* Where it is found that an officer or employee of the Veterans Administration has any interest in, or receives any wages, salary, dividends, profits, gratuities, or services from any such school, and waiver has not been granted, the State approving agency and the school will be notified immediately that the courses offered by the school shall be disapproved, the reason for disapproval, and the conditions under which the disapproval may be lifted.

(e) *Notice to veterans and eligible persons.* The veteran or eligible person

will be notified in writing sent to his or her latest address of record when:

(1) The course or courses are disapproved by the State approving agency, or

(2) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or

(3) Waiver has been denied.

The veteran or eligible person will be informed that he or she may apply for enrollment in an approved course in another school, but that in the absence of such transfer, educational assistance allowance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter, whichever is earlier.

(f) *Definition of "officer."* For the purposes of this section a person will be considered to be an "officer" of the State approving agency or the Veterans Administration, when he or she has authority to exercise supervisory authority.

[31 FR 6774, May 6, 1966, as amended at 43 FR 3707, Jan. 27, 1978]

§ 21.4006 False or misleading statements.

(a) Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States. (38 U.S.C. 1790)

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) Where the falsity of a certification or claim is discovered after payment has been released an overpayment will be set up for only that portion of the claim to which the claimant was not entitled.

(b) A determination that false or misleading statements have been made will not constitute a bar to payments based on further training.

(c) The provisions of this section are not for application where forfeiture of all rights has been or may be declared under the provisions of § 21.4007.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13402, Sept. 23, 1967; 38 FR 14932, June 7, 1973]

§ 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 19.1, 19.2, and 19.3 of this chapter (38 U.S.C. 3503, 3504, and 3505).

§ 21.4008 Prevention of overpayments.

Where there is a question on whether approval of a course should be withdrawn, and it appears that overpayments may exist or be created, further payments to veterans or eligible persons enrolled in the school may be suspended pending resolution of the question. See § 21.4134.

[32 FR 13402, Sept. 23, 1967, as amended at 45 FR 31062, May 12, 1980]

§ 21.4009 Overpayments; waiver or recovery.

(a) *General.* The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it is determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report, as required by §§ 21.4203 and 21.4204, excessive absences from a course, or discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. If it appears that the falsity or misrepresentation was deliberate, no administrative collection may be pursued pending a determination whether the matter should be referred to the Department of Justice for possible criminal or civil action. However, the amount of the overpayment may be recovered from the school by adminis-

trative collection procedure when the false certification or misrepresentation is the consequence of an administrative error or a mistake of fact, or where it is determined that no criminal or civil action is warranted. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law. (38 U.S.C. 1785)

(b) *Reporting.* If a school is required to make periodic or other certifications, failure to report, or to report timely, facts which resulted in an overpayment may be considered in determining whether a school is potentially liable for the overpayment. Similarly the submission of an incorrect certification as to fact may be considered in determining whether a school is potentially liable for the overpayment. In either instance consideration will be given to other pertinent factors such as allowing for occasional clerical error or occasional administrative error; the school's past reliability in reporting; the adequacy of the school's reporting system; and the extent of noncompliance with reporting requirements.

(c) *Committee on School Liability.* Each Veterans Administration field station having jurisdiction over schools with courses approved under chapters 32, 34, 35 and/or 36, title 38, United States Code shall establish a Committee on School Liability. The Committee or a panel designated by the Committee chairperson and drawn from the Committee, is authorized to find whether a school is liable for an overpayment.

(d) *Initial determination.* The Adjudication Officer of the Veterans Administration field station of jurisdiction will determine whether there is evidence that would warrant a finding that the school is potentially liable for an overpayment. When the decision is in the affirmative, the Finance Officer of the Veterans Administration field station of jurisdiction will notify the school in writing of the Veterans Administration's intent to apply the liability provisions of paragraph (a) of this section. The notice will identify

the students overpaid and will set out in each student's case the actions or omissions by the school which resulted in the finding that the school was potentially liable for the overpayment. The notice will also state that a determination of liability will be made on the basis of the evidence of record, unless additional evidence or a request for a hearing is received within 30 days of the date of receipt of such notice by the school.

(e) *Hearings.* A school is entitled to a hearing before a panel drawn from the Committee on School Liability before a decision is made as to whether it is liable for an overpayment. Every hearing will be preceded by a prehearing conference unless the conference is waived by the school. The Committee on School Liability will consider all evidence and testimony presented at the hearing.

(f) *Extent of liability.* Waiver of collection of an overpayment as to a veteran or eligible person will not relieve the school of liability for the overpayment. Recovery in whole or in part from the veteran or eligible person will limit such liability accordingly. If an overpayment has been recovered from the school and the veteran or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the school.

(g) *Notice to school.* The school shall be notified in writing of the decision of the Committee on School Liability. If the school is found liable for an overpayment, the school also will be notified of the right to appeal the decision to the Central Office School Liability Appeals Board within 60 days from the date of the letter to the school containing notice of the decision. The 60-day time limit may be extended to 90 days at the discretion of the chairperson of the Committee on School Liability. The appeal must be in writing setting forth fully the alleged errors of fact and law. If an appeal is not received within the 60-day time limit, the Committee decision is final.

(h) *Appeals.* An appeal will be forwarded to Central Office where it will be considered by the School Liability Appeals Board. The Board's decision

will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the Committee on School Liability in any case where the Board reverses a decision made by the Committee that the school is liable.

(i) *Review.* Review by the School Liability Appeals Board is limited to the issues raised by the school and shall be on the record and not de novo in character. The Board may affirm, modify or reverse a decision of the Committee on School Liability or may remand an appeal for further consideration by the appropriate Committee on School Liability. If new and material evidence is discovered while the School Liability Appeals Board is considering a case, the Board may remand the case to the appropriate Committee on School Liability.

(j) *Finality of decisions.* The School Liability Appeals Board has authority to act for the Administrator in deciding appeals concerning a school's liability for an overpayment. There is no right of additional administrative appeal of a decision of the School Liability Appeals Board.

[32 FR 4533, Mar. 25, 1967, as amended at 40 FR 42879, Sept. 17, 1975; 44 FR 15492, Mar. 14, 1979]

GENERAL

§ 21.4020 Two or more programs.

The aggregate period for which any person may receive assistance under two or more of the laws listed below:

- (a) Parts VII or VIII, Veterans Regulation numbered 1(a), as amended;
- (b) Title II of the Veterans' Readjustment Assistance Act of 1952;
- (c) The War Orphans' Educational Assistance Act of 1956;
- (d) 38 U.S.C. chapters 31, 34, 35, and 36 and the former Chapter 33

may not exceed 48 months (or the part-time equivalent thereof), but this section shall not be deemed to limit the period for which assistance may be received under Chapter 31 alone. (38 U.S.C. 1795)

[38 FR 14932, June 7, 1973]

§ 21.4022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

(a) *Election.* A veteran or eligible person who is eligible for education or training under more than one program under 38 U.S.C. chapters 31, 34, and 35 based on his own service or based on the service of another person must elect which benefit he will receive. The person may reelect at any time.

(b) *Prior training.* (1) If a veteran has pursued an educational or training program under chapters 33 (prior to its repeal), 34, or 35, the program of education or special restorative training previously pursued shall be utilized to the fullest extent practicable in determining the character and duration of vocational rehabilitation to be furnished him. (38 U.S.C. 1502(b))

(2) Where a veteran who is also an eligible person has received educational assistance under chapter 34 or chapter 35, the program of education previously pursued will be utilized to the fullest extent practicable in determining the character and duration of the course for which enrollment may be approved under the other chapter.

[34 FR 843, Jan. 18, 1969]

§ 21.4025 Nonduplication; Federal programs.

(a) *Chapter 35.* Payment of educational assistance allowance and special training allowance are prohibited to an otherwise eligible person:

(1) For a program of education pursued while on active duty; or

(2) For a unit course or courses which are paid for in whole or in part by the United States under the Government Employees' Training Act during any period that full salary is being paid him as an employee of the United States.

(b) *Chapter 34.* Payment of educational assistance allowance is prohibited to an otherwise eligible veteran:

(1) For a unit course or courses which are being paid for in whole or in part by the Armed Forces during any period he is on active duty; or

(2) For a unit course or courses which are being paid for in whole or in part by the Department of Health, Education, and Welfare during any

period that he is on active duty in the Public Health Service; or

(3) For a unit course or courses which are being paid for in whole or in part by the United States under the Government Employees' Training Act during any period that full salary is being paid him as an employee of the United States. (38 U.S.C. 1701(d), 1781; Pub. L. 91-219, 84 Stat. 76)

[36 FR 9021, May 18, 1971]

CROSS REFERENCES: See §§ 21.1025, 21.3024, and 21.3025.

COUNSELING

§ 21.4100 Counseling.

(a) *Purpose of counseling.* The purpose of counseling is to assist:

(1) In selecting an educational or training objective,

(2) In developing a suitable program of education or training,

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective,

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program,

(5) In selecting an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances. (38 U.S.C. 1663, 1720; Pub. L. 95-202, 91 Stat. 1433)

(b) *Availability of counseling.* Counseling assistance is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans, and making sound decisions about the changes. (38 U.S.C. 1663, 1720)

(c) *Requested counseling.* The Veterans Administration shall provide counseling not required by §§ 21.4102 and 21.4105 as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the veteran or eligible person. The Veterans Administration shall take appropriate steps (including individual notification where feasible) to acquaint all eligible veterans with the availability

and advantages of counseling services. (38 U.S.C. 1663)

[44 FR 62496, Oct. 31, 1979, as amended at 45 FR 67092, Oct. 9, 1980]

§ 21.4101 Counseling—38 U.S.C. chapter 34.

Counseling is not required for veterans and servicepersons receiving benefits under 38 U.S.C. chapter 34. (38 U.S.C. 1663)

[45 FR 67092, Oct. 9, 1980]

§ 21.4102 Requirement—38 U.S.C. Chapter 35.

(a) *Child.* (1) Counseling is required for an eligible child before approval of an initial course except when the child has been accepted for, or is pursuing, approved courses which lead to a standard college degree.

(2) The counseling psychologist will assist in preparing an educational plan if requested by the eligible person, or his or her parent or guardian. (38 U.S.C. 1720)

(b) *Spouse or surviving spouse.* Counseling is required for a spouse or surviving spouse only if he or she desires special training. (38 U.S.C. 1733)

[45 FR 67092, Oct. 9, 1980]

§ 21.4103 Failure to cooperate.

When counseling is required and an eligible person fails to report for or fails to cooperate in the counseling process, the Veterans Administration will take no further action on the application. See § 21.3032. (38 U.S.C. 1720)

[45 FR 67093, Oct. 9, 1980]

§ 21.4104 Travel expenses.

(a) *General.* The Veterans Administration shall determine and pay the necessary expense of travel to and from the place of counseling for the eligible person whenever counseling is required. (38 U.S.C. 111)

(b) *Restriction.* The Veterans Administration will not pay the necessary cost of travel to and from the place of counseling when counseling is not required but is provided as a result of a voluntary request by the veteran or eligible person. (38 U.S.C. 111)

(c) *Travel for attendants.* When an eligible person because of a severe disability requires the services of an attendant while traveling, payment of travel expenses will be on the same basis as for the eligible person. (38 U.S.C. 111; Pub. L. 96-151, 93 Stat. 1092)

[45 FR 67093, Oct. 9, 1980]

§ 21.4105 Special training; 38 U.S.C. chapter 35.

(a) Counseling will be provided a handicapped person before a case is considered by the Vocational Rehabilitation Board (established under § 21.715) for determination of need for a course of specialized vocational training or for special restorative training.

(b) When an eligible person completes or discontinues a course of special restorative training without having selected an objective and a program of education, additional counseling will be provided to assist in selecting a program of education.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or 21.4137 while the veteran or eligible person is pursuing a course of education. Except for apprenticeship and on-the-job training programs, no payment will be made based on a course not leading to a standard college degree for excessive absences as determined under § 21.4205(b). (See §§ 21.4136(i) and 21.4137(f) for proportionate reduction where less than 120 hours are completed during a month in apprenticeship and on-job training programs). Final payment may be withheld until proof of continued enrollment is received and the account adjusted. No payment may be made for training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency; no payment may be made for lessons completed in a correspondence course in excess of the number approved by

the State approving agency; and no payment may be made for training in any other type of course which occurs after the additional period, provided in § 21.4277, beyond the length of the course approved by the State approving agency. (38 U.S.C. 1674, 1681; Pub. L. 95-202, 91 Stat. 1433)

(a) The commencing date will be the date of entrance or reentrance into a course as determined under § 21.4131.

(b) The ending date will be the earliest of the following dates:

(1) The ending date of the course or period of enrollment as certified by the school.

(2) The ending date of the veteran's eligibility as determined under §§ 21.1041, 21.1042 and 21.1043. (38 U.S.C. 1662(a); Pub. L. 95-202, 91 Stat. 1433)

(3) The ending date of the eligible person's eligibility as determined under §§ 21.3041, 21.3042 and 21.3046.

(4) The ending date specified in § 21.4135.

[34 FR 844, Jan. 18, 1969, as amended at 44 FR 62496, Oct. 31, 1979]

§ 21.4131 Commencing dates.

The commencing date of an award or increased award of educational assistance allowance will be determined under this section.

(a) *Entrance or reentrance including change of program or school* (§ 21.4234). Latest of following dates:

(1) Date certified by school or establishment under paragraph (b) or (c) of this section.

(2) Date 1 year prior to date of receipt of the application or enrollment certification, whichever is later. (See §§ 21.1032 and 21.3032.)

(3) Date of approval of course or date of receipt of approval notice, if received more than 60 days after date of approval, whichever is later. (Subject to waiver under § 21.4132.)

(4) Date of reopened application under paragraph (d) of this section.

(b) *Certification by school; course leads to standard college degree.* (1) The date of registration, or the date of reporting where the student is required by published standards of the school to report in advance of registration, but not later than the date the person first reports for classes.

(2) The date of enrollment in a subject or in an area of independent study.

(c) *Certification by school or establishment; course does not lead to standard college degree.* (1) Residence school: First date of class attendance.

(2) Correspondence school: Date first lesson sent or date of affirmance whichever is later.

(3) Job training: First date of employment in training position.

(d) *Reopened application after abandonment* (§§ 21.1032 and 21.3032). The date of receipt of application or enrollment certification, whichever is later, if pursuing an approved course.

(e) *Increase for dependent; chapter 34.* (1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) The Veterans Administration receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) The Veterans Administration receives any necessary evidence within 1 year of its request.

(ii) The effective date of the increase will be the date the Veterans Administration receives notice of the dependent's existence if—

(A) The Veterans Administration receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) The Veterans Administration receives any necessary evidence within 1 year of its request.

(iii) The effective date will be the date the Veterans Administration receives all necessary evidence, if that evidence is received more than 1 year from the date the Veterans Administration requested it.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(B) Date notice is received of the dependent's existence if evidence is received within 1 year of the Veterans Administration request.

(C) Date the Veterans Administration receives evidence if this date is more than 1 year after the Veterans Administration request.

(ii) Date dependency arises.

(iii) Date the law permits benefits for dependents generally. (38 U.S.C. 3010(f)(n))

CROSS REFERENCE: See § 3.667 of this chapter as to effective dates with regard to children 18 years of age and older who are attending school.

(f) *Liberalizing laws and Veterans Administration issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(g) *Correction of military records (§§ 21.1042(b), 21.3042(b)).* Where eligibility of a veteran arises as the result of correction or modification of military records under 10 U.S.C. 1552 or change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other competent military authority, the commencing date of educational assistance allowance which is otherwise payable will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department. (38 U.S.C. 1662(b))

[31 FR 6774, May 6, 1966, as amended at 38 FR 32578, Nov. 27, 1973; 39 FR 43220, Dec. 11, 1974; 41 FR 47929, Nov. 1, 1976; 45 FR 59313, Sept. 9, 1980; 46 FR 62060, Dec. 22, 1981]

CROSS REFERENCE: Special restorative training. See § 21.3331.

§ 21.4132 Waiver of time limits.

The time limits specified in § 21.4131(a)(3) for receipt of notice of approval from the State approving agency may be waived if the facts, equities and demonstrated good faith on the part of the school or establishment and the State approving agency

warrant such waiver; and if approval action was not denied or withheld for cause during the retroactive period.

[39 FR 43220, Dec. 11, 1974]

§ 21.4133 Notification of withholding or discontinuance.

Any eligible veteran or eligible person whose payments are suspended or discontinued pursuant to § 21.4134 or 21.4135 shall concurrently receive written notice of the suspension or discontinuance from the Veterans Administration. The notice shall state the reasons for the suspension or discontinuance of payments, and shall notify the veteran or eligible person that he or she has a right to a hearing and to present evidence why payments should not be discontinued or suspended. (38 U.S.C. 1790(b))

[45 FR 31062, May 12, 1980]

§ 21.4134 Suspension and discontinuance.

Notwithstanding the approval of a course by a State approving agency, educational assistance may be discontinued if it is determined that the course of education in which the individual is enrolled fails to meet, or the school has violated, any of the requirements of chapters 34, 35, or 36. Where preliminary evidence indicates that it would be to the best interests of the Government, the station head may suspend further payments to persons enrolled in the school until a determination has been made as to whether approval should be withdrawn and whether overpayments exist. Payments will be released promptly whenever the facts developed justify such action. See § 21.4135(k). (38 U.S.C. 1790)

[45 FR 31062, May 12, 1980]

§ 21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be as specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or eligible person.* Last date of attendance.

(b) *Death of dependent.* Last day of the calendar year in which death

occurs unless discontinuance is required at an earlier date under other provisions.

(c) *Divorce*. (1) Veteran, chapter 34: Last day of the calendar year in which divorce occurs unless discontinuance is required at an earlier date under other provisions.

(2) Spouse, chapter 35: Date the decree became final, subject to extension under paragraph (c) if divorce was without fault on part of the spouse.

(d) *Dependent child, chapter 34*. (1) Last day of the calendar year in which marriage occurred unless discontinuance is required at an earlier date under other provisions.

(2) *Age 18*. Day preceding 18th birthday.

(3) *School attendance*. Last day of month in which school attendance ceased or day preceding 23d birthday, whichever is earlier.

(4) *Helplessness ceased*. Last day of month following 60 days after notice to the payee that helplessness has ceased.

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from* (§§ 21.4136 and 21.4137).

(1) If the individual withdraws from all courses or receives all nonpunitive grades and in either case there are no mitigating circumstances as provided in § 21.4136(k) or 21.4137(h), benefits will be terminated or reduced effective first date of the term in which the withdrawal occurs or the term for which the grades are assigned or December 1, 1976, whichever is the later.

(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, as provided in § 21.4136(k) or 21.4137(h), or withdraws from all courses such that a punitive grade is or will be assigned for those courses:

(i) *Residence training*: Last date of attendance.

(ii) *Independent study*: Official date of change in status under the practices of the institution.

(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:

(i) *Correspondence training*: Date last lesson is serviced.

(ii) *Flight training*: Date of last instruction.

(iii) *Job training*: Date of last training.

(iv) *Farm cooperative training*: Date of last class attendance.

(v) *Cooperative training*: Date of last training. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(f) *Discontinued by Veterans Administration* (§§ 21.4134 and 21.4207). (1) Date on which payments first were suspended by the Director of a Veterans Administration field station as provided in § 21.4134, if discontinuance was preceded by such a suspension. (38 U.S.C. 1790)

(2) End of the month in which the decision to discontinue, made by the Veterans Administration pursuant to § 21.4134 or 21.4207, is effective, if the Director of a Veterans Administration field station did not suspend payments prior to the discontinuance. (38 U.S.C. 1790)

(g) *Unsatisfactory progress* (§ 21.4277). The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under § 21.4277, whichever is earlier.

(h) *Required certifications not received after certification of enrollment* (§§ 21.4203 and 21.4204). (1) If required certification of attendance of a veteran or eligible person enrolled in a course not leading to a standard college degree is not timely received, payments will be terminated date of last certification. If certification is later received, adjustment will be made based on facts found.

(2) If verification of enrollment and certificate of delivery of the check is not received within 60 days, in the case of an advance payment, the actual facts will be determined and adjustment made, if required, on the basis of facts found. If student failed to enroll, termination will be effective the beginning date of the enrollment period.

(i) *False or misleading statements*. See § 21.4006.

(j) *Disapproval by State approving agency* (§ 21.4259(a)). (1) Date on which payments first were suspended

by the Director of a Veterans Administration field station as provided in § 21.4134, if disapproval was preceded by such a suspension. (38 U.S.C. 1772(a), 1790)

(2) End of the month in which disapproval is effective or notice of disapproval is received in the Veterans Administration, whichever is later, provided that the Director of a Veterans Administration field station did not suspend payments prior to the disapproval. (38 U.S.C. 1772(a), 1790)

(k) *Disapproval by Veterans Administration* (§§ 21.4134, 21.4207, 21.4259(c)). (1) Date on which payments first were suspended by the Director of a Veterans Administration field station as provided in § 21.4134 if disapproval was preceded by such a suspension. (38 U.S.C. 1771(b), 1772(a), 1790)

(2) End of the month in which disapproval occurred, provided that the Director of a Veterans Administration field station did not suspend payments prior to the disapproval. (38 U.S.C. 1771(b), 1772(a), 1790)

(l) *Conflicting interests (not waived)* (§ 21.4005). Thirty days after date of letter notifying veteran or eligible person, unless terminated earlier for other reason.

(m) [Reserved]

(n) *Active duty* (§§ 21.4136(c) and 21.3042). Day before entrance on active duty. (Does not apply to brief periods of active duty for training if school permits such absence without interruption of training; however, where course does not lead to standard college degree, the absence must be reported as required by § 21.4205.)

(o) *Veteran no longer rated permanent total disabled; or spouse (trainee) divorced from veteran without fault on his or her part; or serviceman or servicewoman removed from "missing status" listing—chapter 35* (§§ 21.3041 and 21.3046). (1) End of quarter or semester if school is operated on quarter or semester system.

(2) End of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system (38 U.S.C. 1711(b))

(p) *Error; payee's or administrative.* (1) Effective date of award or day preceding act, whichever is later, but not

prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error or error in judgment.

(q) *Fraud; forfeiture resulting* (§ 21.4007). Beginning date of award or day preceding date of fraudulent act whichever is later.

(r) *Treasonable acts or subversive activities; forfeiture* (§ 21.4007). Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

(s) *Reduction in rate of pursuit of course* (§ 21.4270). (1) If the individual reduces training by withdrawing from part of a course because of mitigating circumstances, but continues training in part of the course, benefits will be reduced effective at the end of the month or the end of the term in which withdrawal occurs, whichever is earlier, except first date of the term in which reduction occurs, if the reduction occurs at the beginning of the term.

(2) If the individual reduces training by withdrawing from a part of a course, without mitigating circumstances, the reduction is effective first date of enrollment of the term in which the reduction occurs or December 1, 1976, whichever is the later. See paragraphs (e) and (w) of this section also.

(t) *Change in law or Veterans Administration issue, or interpretation.* See § 3.114(b) of this chapter.

(u) *Except as otherwise provided.* On basis of facts found.

(v) *Remarriage of spouse or surviving spouse.* (1) Remarriage: Last date of attendance before remarriage.

(2) Conduct of spouse or surviving spouse: Last day of month before inception of relationship.

(w) *Nonpunitive grade.* (1) If the individual receives a nonpunitive grade in a particular course, reduction will be effective last date of attendance, when mitigating circumstances are found.

(2) If the individual receives a nonpunitive grade in a particular course, reduction will be effective the first

date enrollment for the term in which the grade applies, or December 1, 1976, whichever is later, when no mitigating circumstances are found. See paragraphs (e) and (s) of this section.

[31 FR 6774, May 6, 1966, as amended at 31 FR 11454, Aug. 31, 1966; 32 FR 3979, Mar. 11, 1967; 37 FR 4912, Mar. 7, 1972; 39 FR 43220, Dec. 11, 1974; 40 FR 33824, Aug. 12, 1975; 41 FR 26682, June 29, 1976; 43 FR 35292, Aug. 9, 1978; 45 FR 31063, May 12, 1980; 46 FR 48196, Oct. 1, 1981]

CROSS REFERENCE: *Special restorative training.* See § 21.3332.

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1977:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	\$311	\$370	\$422	\$26
$\frac{3}{4}$ time	233	277	317	19
$\frac{1}{2}$ time	156	185	211	13
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time ¹	² 156			
$\frac{1}{4}$ time or less ¹	² 78			
Cooperative, other than farm cooperative (full time only)	251	294	334	19
Apprentice or on-job (full time only but see footnote ³ below.) Payment designated training assistance allowance:				
First 6 months	226	254	277	12
Second 6 months	169	197	221	12
Third 6 months	113	141	154	12
Fourth 6 months and succeeding periods	56	84	108	12
Correspondence	(⁴)	(⁴)	(⁴)	(⁴)
Flight training	(⁴)	(⁴)	(⁴)	(⁴)
Farm cooperative:				
Full time	251	294	334	19
$\frac{3}{4}$ time	168	221	251	15
$\frac{1}{2}$ time	126	147	167	10

¹If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized.

²See paragraph (b) of this section.

³See footnote⁵ of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

⁴90 per centum of the established charge for number of lessons completed by veteran and serviced by school. Established charge means that the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges.—Allowance paid quarterly.

⁵90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received. See § 21.1045(a)(2).

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

(b) *Less than half-time.* The monthly rate for an individual who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course, computed on the total cost for tuition and fees which the school requires similarly circumstanced nonveterans enrolled in the same course to pay. "Cost of the course" does not include the cost of supplies which the student is required to purchase at his or her own expense.

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar

course to have. Where there is no same program, the cost of the course will be established by the Veterans Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement	Rates
Full time.....	\$311
$\frac{3}{4}$ time.....	233
$\frac{1}{2}$ time.....	156
Less than $\frac{1}{2}$, but more than $\frac{1}{4}$ time.....	156
$\frac{1}{4}$ time or less.....	78

(38 U.S.C. 1682; Pub. L. 95-202, 91 Stat. 1433)

(d) *June 1966.* A veteran who commenced a course prior to June 1, 1966, will not be paid for any part of the month of June 1966, unless his or her course continues through June 30, 1966. (Sec. 12(a), Pub. L. 89-358, 80 Stat. 28)

(e) *Excessive absences.* Other than apprenticeships and on-job training, when enrollment is in a course which does not lead to a standard college degree absences in excess of the maximum number allowable will cause a reduction in the educational assistance allowance payable for the month in which such absences occurred. The rate of reduction will be determined by the following table:

Days of scheduled attendance per week:	Rate of reduction for each day of excessive absence
5 or more.....	$\frac{1}{5}$
4.....	$\frac{2}{5}$
3.....	$\frac{3}{5}$
2.....	$\frac{4}{5}$
1.....	$\frac{1}{2}$

(f) *Dependents.* The term "dependent" means a spouse, child or dependent parent who meets the definitions of relationship specified in §§ 3.50, 3.51, 3.57 and 3.59 of this chapter. A child adopted outside the veteran's family is included only if the veteran is contributing to the child's support.

(g) *Allowance for dependents—(1) Concurrent benefits.* Additional educational assistance allowance may be paid to a veteran concurrently with additional disability pension or compensation for the same dependent.

(2) *Two-veteran cases.* The payment of additional educational assistance allowance to a veteran for a spouse who is also a veteran and for a child will not bar the payment of additional educational assistance allowance or additional subsistence allowance under § 21.133 to the spouse for his or her spouse and the same child. The term "child" includes a veteran who meets the requirements of § 3.57 of this chapter, even though the "child" is receiving subsistence allowance or educational assistance allowance under 38 U.S.C. ch. 31, 34 or 36 based on his or her own service. (38 U.S.C. 1682, 1787)

(h) *Payment.* Educational assistance allowance at the rates specified in paragraphs (b) and (c) of this section for servicemen or servicewomen on active duty, other than those training under the Predischarge Education Program who qualify for an advance payment under paragraph (j) of this section and who are training on a less than half-time basis, will be paid to or on behalf of the trainee enrolled in an institution operating on a term, quarter or semester basis in a lump sum for the entire quarter, semester or term. These payments will be made during the month immediately following the month in which certification is received from the educational institution that the veteran has enrolled in and is pursuing a program at the institution.

(i) *Proportionate reduction in monthly training assistance allowance less than 120 hours—(1) Reduced training allowance.* For any month in which an eligible veteran pursuing an apprenticeship or on-job training program fails to complete 120 hours of training the Veterans Administration shall reduce the rate specified in paragraph (a) of this section proportionally. In this computation the Veterans Administration shall round the number of hours worked to the nearest multiple of eight.

(2) *Definition of "hours worked."* For the purpose of this paragraph "hours worked" include only—

(i) The training hours the veteran worked, and

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See footnote 5 to § 21.4270(b) as to the requirements for full-time training.) (38 U.S.C. 1787(b)(3))

(j) *Advance payment—(1) Eligibility.* Educational assistance allowance at the rates specified in § 21.4136(a) shall be paid to an eligible veteran, serviceman or servicewoman on active duty enrolled in an approved educational institution on a half-time or more basis and to all servicemen and servicewomen training under the PredischARGE Education Program.

(2) *Payment.* Upon receipt of an application and if there is no evidence in the veteran's, serviceman's, or servicewoman's file showing that he or she is not eligible for such an advance the check for the allowance, made payable to the veteran, serviceman or servicewoman shall be mailed to the institution for delivery to the veteran, serviceman or servicewoman upon registration. No delivery by the institution shall be made more than 30 days in advance of commencement of his or her program. If delivery is not made within 30 days after commencement of the program, the institution shall return the check to the Veterans Administration. The Director of the regional office or Veterans Administration center of jurisdiction may direct that advance payments shall not be made to veterans and other eligible persons if the institution demonstrates an inability to comply with these requirements, if the institution fails to adequately provide for the safekeeping of the checks prior to delivery to the student or return to the Veterans Administration, or if he or she determines, based upon compelling evidence, that the institution demonstrates its inability to discharge its responsibilities under the advanced payment program.

(i) *Veterans.* The amount of the payment is not to exceed the allowance for the month or fraction thereof in

which the course will commence plus the allowance for the following month. Subsequent payments shall be made each month in accordance with provisions set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. Final payment may be withheld until certification is received that the veteran pursued his or her course and any necessary adjustments made.

(ii) *Servicemen and servicewomen on active duty.* The payment will be in a lump sum based upon the amount payable for the entire quarter, semester, or term, as applicable. The application must be endorsed by the school to verify information needed to determine the lump-sum payment.

(iii) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution at which the veteran or eligible person is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of 38 U.S.C. 1780(d)(4) (B) and (C) and (5) pertaining to receipt, delivery or return of advance checks and certifications of delivery and enrollment. Furthermore, all other payments made on or after that date shall be made only at the end of the month in which the training for which payment is made shall have occurred.

(iv) *Time of payment.* The Veterans Administration will authorize advance payment only at the beginning—

(A) Of an ordinary school year, or

(B) Of any other enrollment period which begins after a break of 30 days or more, provided the veteran is not eligible for payment for the break. See § 21.4138(d) for payments made after advance payments. (38 U.S.C. 1780(d))

(3) *Application.* Payment will be authorized upon receipt of an application which in the case of an eligible serviceman or servicewoman has been endorsed by the educational institution. The application will contain a certification showing the following information:

(i) The veteran, serviceman or servicewoman is eligible for educational benefits;

(ii) He or she has been accepted by the institution or is eligible to continue his or her training there;

(iii) He or she has notified the institution of his or her intention to attend that institution or to reenroll in it;

(iv) The number of semester, clock or Carnegie hours to be pursued by the veteran, serviceman or servicewoman and the cost of the course for the serviceman or servicewoman; and

(v) The beginning and ending dates of the enrollment period.

(4) *Certification for the predischARGE education program.* In addition to the information required in paragraph (j)(3) of this section, the enrollment certificate shall specify the following:

(i) The program to be pursued has been approved;

(ii) The anticipated cost;

(iii) Where the program to be pursued is other than a high school credit course, the need of the person to pursue the course or courses to be taken.

(k) *Mitigating circumstances.* (1) The Veterans Administration will not pay benefits to any veteran for a course from which the veteran withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(i) There are mitigating circumstances, and

(ii) The veteran submits the circumstances in writing to the Veterans Administration within 1 year from the date the veteran withdraws or the date he or she completes the course for which the nonpunitive grade is given.

(2) The following circumstances are representative of those which the Veterans Administration considers to be mitigating provided they prevent the veteran or eligible person from pursuing the program of education continuously. This list is not all-inclusive.

(i) An illness of the veteran or other eligible person,

(ii) An illness or death in the veteran's or eligible person's family,

(iii) An unavoidable geographical transfer resulting from the veteran's or eligible person's employment,

(iv) An unavoidable change in the veteran's or eligible person's conditions of employment,

(v) Immediate family or financial obligations beyond the control of the veteran or eligible person which require him or her to suspend pursuit of the program of education to obtain employment,

(vi) Discontinuance of a course by the school,

(vii) Unanticipated active duty military service, including active duty for training.

(3) If the student fails to complete satisfactorily a course under Subchapter V, Chapter 34, Title 38, United States Code, without fault, the Veterans Administration will consider the circumstances which caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education. (38 U.S.C. 1780(a))

[31 FR 8292, June 14, 1966, as amended at 36 FR 2509, Feb. 5, 1971; 38 FR 14933, June 7, 1973; 39 FR 43220, Dec. 11, 1974; 40 FR 31760, July 29, 1975; 43 FR 35293, Aug. 9, 1978; 44 FR 62496, Oct. 31, 1979; 45 FR 48885, July 22, 1980; 46 FR 43667, Aug. 31, 1981; 46 FR 48664, Oct. 2, 1981]

CROSS REFERENCE: Fractions of 1 cent. See § 3.112 of this chapter.

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate effective October 1, 1977
Institutional	
Full time.....	\$311
$\frac{3}{4}$ time.....	233
$\frac{1}{2}$ time.....	156
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time.....	156
$\frac{1}{4}$ time or less.....	78
Cooperative, other than farm cooperative (full time only).....	251
Apprentice or on-job (full time only but see footnote 1 below.) Payment designated training assistance allowance:	
First 6 months.....	226
Second 6 months.....	169
Third 6 months.....	113
Fourth 6 months and succeeding periods.....	56
Farm cooperative:	
Full time.....	251
$\frac{3}{4}$ time.....	188
$\frac{1}{2}$ time.....	126
Correspondence.....	(7)

¹See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

²90 per centum of the established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser.—Allowance paid quarterly.

³If an eligible person under chapter 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$156 or \$78 as appropriate per month if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3); Pub. L. 95-202, 91 Stat. 1433)

(38 U.S.C. 1682, 1732, 1786, 1787; Pub. L. 95-202, 91 Stat. 1433)

(b) *Less than half-time.* The monthly rate for an individual who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course, computed on the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. "Cost of the course" does not include the cost of books or supplies which the student is required to purchase at his or her own expense. (38 U.S.C. 1732(a)(2))

(c) *Excessive absences.* Reduction of educational assistance allowance by reason of excessive absences in a course which does not lead to a standard college degree will be made in the same manner described in § 21.4136(e). (38 U.S.C. 1732)

(d) *Payments in Philippine pesos.* Educational assistance allowance will be payable at a rate in Philippine pesos equivalent to \$0.50 for each dollar authorized in those instances in which:

(1) Entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter; or

(2) The program of education is pursued at an institution located in the Republic of the Philippines.

(e) *Payment.* Educational assistance allowance at the rates specified in paragraph (b) of this section will be paid to or on behalf of the eligible person enrolled in an institution operating on a term, quarter, or semester basis in a lump sum for the entire quarter, semester, or term. These payments will be made during the month

immediately following the month in which certification is received from the educational institution that the eligible person has enrolled in and is pursuing a program at the institution.

(f) *Proportionate reduction in monthly training assistance allowance less than 120 hours—*(1) *Reduced training allowance.* For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training the Veterans Administration shall reduce the rate specified in paragraph (a) of this section proportionally. In this computation the Veterans Administration shall round the number of hours worked to the nearest multiple of eight.

(2) *Definition of "hours worked."* For the purpose of this paragraph "hours worked" include only—

(i) The training hours the eligible person worked, and

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages. (See footnote 5 to § 21.4270(b) as to the requirements for full-time training.) (38 U.S.C. 1787(b)(3))

(g) *Advance payment—*(1) *Eligibility.* Educational assistance allowance at the rates specified in § 21.4137(a) shall be paid to an eligible person enrolled in an approved educational institution on a half-time or more basis.

(2) *Payment.* The amount of the payment is not to exceed the allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month. Upon receipt of an application, together with an enrollment certification or other information as required by paragraph (g)(3) of this section and if there is no evidence in the eligible person's file showing that he or she is not eligible for such an advance, the check, made payable to the eligible person, shall be mailed to the institution for delivery to the eligible person upon registration. No delivery shall be made more than 30 days in advance of commencement of the program. Subsequent payments shall be made each month in advance subject to certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and

21.4205. Final payment will be withheld if absence reporting is required until the required certification is received and any necessary adjustments made.

(3) *Certification.* Advance payment will be authorized initially and at the beginning of each subsequent term within an enrollment period preceded by an interval of non-payment for one full calendar month or more provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person contains the following information:

(i) The eligible person is eligible for educational benefits;

(ii) The eligible person has been accepted by the institution or is eligible to continue training there;

(iii) The eligible person has notified the institution of his or her intention to attend that institution or to reenroll in it;

(iv) The number of semester, clock or Carnegie hours to be pursued by the eligible person; and

(v) The beginning and ending dates of the enrollment period.

(4) *Exception.* Notwithstanding any provision of this section or any other section of Title 38, Code of Federal Regulations, on and after June 1, 1977, no advance payment of benefits shall be made, unless the individual shall first specifically request such a payment and the educational institution at which the veteran or eligible person is accepted or enrolled has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 1780(d)(4)(B) and (C) and (5), pertaining to receipt, delivery or return of checks and certifications of delivery and enrollment. Furthermore, all other payments made on or after that date shall be made only at the end or after the end of the month in which the training for which payment is made shall have occurred.

(5) *Time of payment.* The Veterans Administration will authorize advance payment only at the beginning—

(i) Of an ordinary school year, or

(ii) Of any other enrollment period which begins after a break of 30 days or more, provided the eligible person is not eligible for payment for the break.

See § 21.4138(d) for payments made after advance payments. (38 U.S.C. 1780(d))

(h) *Mitigating circumstances.* Unless there are mitigating circumstances, benefits will not be paid to any eligible person for a course from which the student withdraws or receives a non-punitive grade which is not used in computing the requirements for graduation. Mitigating circumstances shall include but not be limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or a change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V, chapter 35, or under section 1733, Title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) Discontinuance of a course by a school.

(6) Unanticipated active duty military service, including active duty for training. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

[31 FR 6774, May 6, 1966, as amended at 31 FR 13993, Nov. 2, 1966; 35 FR 9815, June 16, 1970; 38 FR 14934, June 7, 1973; 39 FR 31902, Sept. 3, 1974; 40 FR 31761, July 29, 1975; 43 FR 35294, Aug. 9, 1978; 44 FR 62497, Oct. 31, 1979; 45 FR 48885, July 22, 1980; 46 FR 43667, Aug. 31, 1981]

§ 21.4138 Certifications and release of payments.

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under chapter 34 or 35 on the basis of the appropriate certification required in §§ 21.4136, 21.4137, 21.4203, 21.4204, and 21.4205

concerning enrollment in or the pursuit of a course during the reporting period.

(a) *Lump sum—in advance.* A certification by an institution that the eligible individual has enrolled will be sufficient to release a lump-sum payment to or on behalf of the individual for the entire quarter, semester or term no earlier than 30 days prior to the date the program of training is to begin, provided that the payment is made before June 1, 1977, and provided the individual is:

(1) A serviceman or servicewoman on active duty training on a half-time or greater basis, or

(2) A serviceman or servicewoman on active duty training in a Predischarge Education Program course, regardless of the training time.

(b) *Lump sum—in month following.* Such a certification by an institution will be sufficient to release the payment of a lump sum to or on behalf of the individual for the entire quarter, semester or term in the month following the receipt of the certification by the Veterans Administration, provided the individual is:

(1) A serviceman or servicewoman who is on active duty and who is training in a non-Predischarge Education Program course on a less than half-time basis,

(2) A veteran or other eligible person who is not on active duty and who is training on a less than half-time basis,

(3) An individual referred to in paragraph (a) of this section who is receiving payment after June 1, 1977, and who has not specifically requested an advance payment as provided in paragraph (d) of this section.

(c) *Payment released prior to June 1, 1977.* Such a certification by an institution will be sufficient to release the payment of educational assistance allowance for the month or fraction thereof in which the course will commence plus the allowance for the following month, to a veteran or other eligible person who is not on active duty and who is training at a half-time or greater rate, provided the payment is made prior to June 1, 1977. Payment for months subsequent to those represented by the advance payment shall be made each month in advance of

that month's training subject to submission of reports required from the school and student by §§ 21.4203, 21.4204, and 21.4205, but if the month for which such payment is made is subsequent to May 1977, the payment shall be made in the month immediately following the month in which the training occurs and is certified to the Veterans Administration.

(d) *Payment released subsequent to June 1, 1977.* On and after June 1, 1977, no advance payment will be made to any person who otherwise qualifies for one under either paragraph (a) or (c) of this section, unless the individual specifically requests an advance payment. On and after that date no individual shall be entitled to receive prepayment of benefits for training which occurs in months for which no advance payment is payable and no request for such a payment will be honored.

(e) *Payment for last month of training.* Payment for the last month of the enrollment period will not be released to an individual pursuing an institutional course not leading to a standard college degree until the Veterans Administration has received final certification as required by §§ 21.4203 and 21.4205.

(f) *Payment for intervals between terms.* A certification such as described by this section may result in payment for intervals between individual terms, quarters or semesters. In determining whether a veteran or eligible person will be paid for such an interval the Veterans Administration will first determine whether any of the provisions of paragraph (f)(1) of this section apply. If any do, the Veterans Administration will make no payment for the interval. If none of the provisions of paragraph (f)(1) of this section apply the Veterans Administration will examine the appropriate provisions of paragraph (f) (2) and (4) of this section to determine if payments may be made for the interval.

(1) The Veterans Administration will make no payment for an interval described in paragraph (f)(2) of this section if—

(i) The student is training at less than the half-time rate on the last

date of his or her training during the term, quarter, semester or summer term preceding the interval;

- (ii) The student is on active duty;
- (iii) The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;
- (iv) The student will exhaust his or her entitlement by receipt of such payment, and it is to the advantage of the individual not to receive payment;
- (v) The interval occurs between school years at a school which is not organized on a term, quarter or semester basis; or

(vi) The veteran or eligible person withdraws from all his or her courses in the term, quarter, or semester or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter or semester basis.

(2) If none of the provisions of paragraph (f)(1) of this section apply, the Veterans Administration will use the provisions of this subdivision to determine if an interval payment should be made. In determining the length of a summer term the Veterans Administration will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(i) The Veterans Administration may make payments when a school is closed temporarily under an established policy based upon an Executive Order of the President or due to an emergency situation.

(ii) If a veteran or eligible person transfers from one approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution, the Veterans Administration may make payments for any intervals which do not exceed 30 days and which occur between consecutive terms, quarters or semesters. If the veteran or eligible person does not enroll in a similar course at the second institution, the Veterans Administration shall not make payments for the interval.

(iii) If the veteran or eligible person remains enrolled at the same educational institution, the Veterans Administration may make payment for

an interval which does not exceed 1 full calendar month and which occurs between—

(A) Semesters or quarters as defined by § 21.4200(b),

(B) Semesters or quarters and a term,

(C) Semesters or quarters and a summer term which is at least 8 weeks long,

(D) Consecutive terms other than semesters or quarters as defined by § 21.4200(b), or

(E) A term and a summer term which is at least 8 weeks long.

(iv) If the veteran or eligible person remains enrolled at the same educational institution the Veterans Administration may make payment for an interval which does not exceed 30 days and which occurs between—

(A) Terms, quarters or semesters and a summer term which is less than 8 weeks long,

(B) Terms, quarters or semesters and a summer session which is less than 8 weeks long, or

(C) Summer sessions within a summer term.

(3) The days for which the interval payment is made shall not count as absences for the purpose of § 21.4205 if the school is closed due to an Executive Order of the President, or due to an emergency situation. In all other cases the days for which the interval payment is made shall count as absences for the purpose of § 21.4205. (38 U.S.C. 1780)

(4) If a veteran is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), the Veterans Administration will determine whether the veteran or eligible person is entitled to a payment during an interval as follows:

(i) The Veterans Administration will treat the ending date of each enrollment period as though it were the veteran's or eligible person's last date of training before the interval.

(ii) The Veterans Administration will treat the beginning date of each enrollment period as though it were the veteran's or eligible person's first date of training after the interval.

(iii) The Veterans Administration will examine the interval payment

which would be made to the veteran or eligible person on the basis of the various combinations of beginning and ending dates. The ending date and beginning date of the enrollment periods which will result in payment for the interval at the highest rate will be chosen as the start and finish of the interval for Veterans Administration measurement purposes.

(iv) Payment for the interval will be made at the rate determined in paragraph (f)(4)(iii) of this section. The Veterans Administration shall not reduce the rate as the result of training the veteran or eligible person may take during the interval, but it shall increase the rate if warranted by such training. (38 U.S.C. 1780(a))

[43 FR 35295, Aug. 9, 1978, as amended at 44 FR 62497, Oct. 31, 1979; 46 FR 20673, Apr. 7, 1981]

§ 21.4139 Payee.

(a) *Educational assistance allowance—Chapter 34.* Payment will be made to the veteran or to a duly appointed fiduciary. Direct payment to the veteran may be made notwithstanding his or her minority.

(b) *Educational assistance allowance—Chapter 35.* (1) Payment will be made to the eligible person if he or she has attained majority and has no known legal disability or, notwithstanding minority, where it is found to be in his or her best interests unless there is some known reason why he or she should not be designated as payee.

(2) Where the eligible person is not designated as payee, payments will be made to the parent or guardian of the eligible person, to a fiduciary or to some other suitable person.

[31 FR 6774, May 6, 1966, as amended at 40 FR 31761, July 29, 1975]

§ 21.4140 Apportionment.

(a) *General.* Where in order, that portion of the educational assistance allowance payable to a veteran training under Chapter 34 because of dependents will be subject to apportionment in accordance with § 3.451 of this chapter, subject to the limitations of § 3.458 of this chapter.

(b) *Effective date.* The effective date of apportionment will be as prescribed in § 3.400(e) of this chapter.

[38 FR 14935, June 7, 1973]

§ 21.4141 Offsets; 38 U.S.C. chapter 35; pension, compensation and dependency and indemnity compensation.

Payment of educational assistance allowance will be subject to offset of amounts of pension, compensation, or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance (38 U.S.C. 1762).

CROSS REFERENCE: *Discontinuance of pension, compensation or dependency and indemnity compensation.* See § 3.503(h) of this chapter.

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or \$625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be complet-

ed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or \$2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95-202, 91 Stat. 1433)

(b) *Selection criteria.* Whenever feasible, veteran-students with disabilities rated at 30 percent or more are to be given priority in selection for this allowance. In addition the following selection criteria should be considered:

(1) Need of the veteran to augment his or her subsistence allowance;

(2) Availability to the veteran of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran; and

(4) Compatibility of the work assignment to the veteran's physical condition.

(c) *Utilization.* Veteran-student services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Veterans Administration employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Veterans Administration;

(3) Hospital and domiciliary care and medical treatment at Veterans Administration facilities; and

(4) Any other appropriate activity of the Veterans Administration.

(d) *Survey.* A survey of each regional office will be conducted annually to determine the number of veteran-students whose services can be effectively utilized.

[38 FR 12214, May 10, 1973, as amended at 40 FR 31761, July 29, 1975; 44 FR 62497, Oct. 31, 1979]

§ 21.4146 Assignments of benefits prohibited.

(a) *General.* Section 3101(a), title 38, United States Code, provides that pay-

ments of benefits due or to become due under the laws administered by the Veterans Administration shall not be assigned, except to the extent specifically authorized by law. No law specifically authorizes assignments of educational assistance allowances payable under chapters 34, 35 and 36, title 38, United States Code, and therefore none shall be made.

(b) *Designating an attorney-in-fact.* In any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(c) *Arrangements amounting to an assignment.* Payments may be made to a post office box address or a bank address only if the educational institution attests that it has not entered into an assignment agreement with the student, and is not the attorney-in-fact of the student with power to negotiate an educational assistance check on behalf of the student and is not otherwise able to control the proceeds of the benefits check. Such statements shall be subject to review and when determined to be false, may be cause for creation of an overpayment to the account of the veteran or other eligible person, for which the educational institution may be liable under the provisions of § 21.4009.

(d) *Correspondence school addresses.* A request by a veteran or other eligible person to send the benefit check payable to him or her at an address which is an educational institution primarily engaged in correspondence course instruction will be presumed not to be the actual address of the veteran or other eligible person and will not be honored. Benefits checks will not be sent to the veteran or other eligible person in that event until a new address is provided designating the individual's mailing address.

(e) *Referral to Committee on Educational Allowances.* When the evidence of record indicates that an educational institution has violated the terms of this section, the matter will be re-

ferred to the field station Committee on Educational Allowances as provided in §§ 21.4207 and 21.4202(b)(4). (38 U.S.C. 3101(a); Pub. L. 94-502, 90 Stat. 2383)

(f) *Savings clause.* Notwithstanding any other provision of this section the Director of the Veterans Administration field station of jurisdiction may authorize the educational institution to negotiate educational assistance checks payable to the veteran or eligible person under a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the school to negotiate the check, provided that the following criteria are met:

(1) The veteran or eligible person owes the full proceeds of the check to the educational institution for tuition and fees;

(2) The educational institution is able to establish that it will face undue financial hardship if it is unable to negotiate the check; and

(3) The check is for training:

(i) Received by the veteran or eligible person for a course offered by the educational institution under provisions of subchapter VI of chapter 34, title 38, United States Code, for Pre-discharge Education Program training, or at a location not in a State under provisions of section 1676, title 38, United States Code, and the course was begun by the veteran or the eligible person prior to December 1, 1976, and completed not later than June 30, 1977; or

(ii) By an accredited correspondence school received by the veteran or eligible person while residing in a State, and represents payment for lessons completed under section 1786, title 38, United States Code, that were serviced by the school prior to January 1, 1977. (Sec. 305(c)(1), Pub. L. 95-202, 91 Stat. 1433)

[43 FR 35296, Aug. 9, 1978, as amended at 44 FR 62498, Oct. 31, 1979]

STATE APPROVING AGENCIES

§ 21.4150 Designation.

(a) The Chief Executive of each State is requested to create or designate a State department or agency as the "State approving agency" for his

State, for the purpose of assuming the responsibilities delegated to the State under 38 U.S.C. chapter 36, or if the law of the State provides otherwise, to indicate the agency provided by such law (38 U.S.C. 1771(a)).

(b) The Chief Executive of each State will notify the Veterans Administration of any change in the designation of a State approving agency.

(c) If any State does not have and fails or declines to create or designate a State approving agency, the provisions of 38 U.S.C. chapter 36 which refer to the State approving agency will, with respect to such state, be deemed to refer to the Administrator (38 U.S.C. 1771(b)). See § 21.4001(c).

(d) Any function, power or duty otherwise required to be exercised by a State, or by an officer or agency of a State, will, with respect to the Republic of Philippines, be exercised by the station head (38 U.S.C. 212(a), 1761(b)).

(e) The Administrator shall act as State approving agency for programs of apprenticeship, the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and the training establishment is a carrier directly engaged in interstate commerce which provides such training in more than one State. (38 U.S.C. 1772(c))

(f) Approval of a course of education offered by any agency or instrumentality of the Federal Government shall be under the authority of the Administrator. (38 U.S.C. 1772(b))

[31 FR 6774, May 6, 1966, as amended at 35 FR 9815, June 16, 1970; 37 FR 6679, Apr. 1, 1972]

CROSS REFERENCE: *Approval of courses.* See § 21.4250.

§ 21.4151 Cooperation.

(a) The Veterans Administration and the State approving agencies will take cognizance of the fact that definite duties, functions and responsibilities are conferred upon each of them. To assure that programs of education are administered effectively and efficiently, the cooperation of the Veterans

Administration and the State approving agencies is essential (38 U.S.C. 1773(a)).

(b) State approving agencies are responsible for inspecting and supervising schools within the borders of their respective States and for determining those courses which may be approved for the enrollment of veterans and eligible persons. They are also responsible for ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved. Under agreement with the Veterans Administration they will also be responsible for rendering services and obtaining information necessary for the Administrator's approval or disapproval under chapters 34 and 35 of courses of education offered by any agency or instrumentality of the Federal Government within the borders of their respective States. (38 U.S.C. 1772, 1773)

(c) The Veterans Administration will furnish State approving agencies with copies of such Veterans Administration informational and instructional material as may aid them in carrying out the provisions of 38 U.S.C. chapter 36 (38 U.S.C. 1773(b)).

[31 FR 6774, May 6, 1966, as amended at 37 FR 6679, Apr. 1, 1972]

§ 21.4152 Control by agencies of the United States.

(a) No department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution. (38 U.S.C. 1782)

(b) The provisions of paragraph (a) of this section do not restrict the authority conferred on the Veterans Administration:

(1) To define full-time training in certain courses.

(2) To determine whether overcharges were made by a school and to disapprove the school for enrollment of veterans or eligible persons not previously enrolled. See § 21.4202.

(3) To determine whether the State approving agencies under the terms of contract or reimbursement agreements are complying with the standards and provisions of the law.

(4) To examine the records and accounts of schools which are required to be made available for examination by duly authorized representatives of the Federal Government. See § 21.4209.

(5) To disapprove schools or courses for reasons stated in the law and to approve schools or courses notwithstanding lack of State approval.

§ 21.4153 Reimbursement of expenses.

(a) *General.* If a State or local agency requests to be paid for service contemplated by the law, and submits information prescribed in paragraph (e) of this section, contracts or agreements will be negotiated with such State agencies to pay for the reasonable and necessary expenses of salary and travel incurred by its employees in:

(1) Determining the qualification of educational institutions for furnishing courses of training to veterans and eligible persons and in the supervision of such educational institutions. Supervision for which reimbursement may be made will consist of services required in determining that the courses are furnished in accordance with the criteria set forth in the law or prescribed by the State approving agencies pursuant to the law and upon which the original approval was granted, and of those services required in disapproving any courses which fall below the established criteria.

(2) Furnishing any other services in connection with the law as may be requested by the Veterans Administration.

(b) *Reimbursement.* The Chief Benefits Director and the Director, Education and Rehabilitation Service are authorized to enter into agreements for reimbursement to the extent necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b).

(c) *Reimbursable expenses.* Reimbursement may be made from the funds provided in the existing contract with the State approving agency under the provisions of this section. No reimbursement may be authorized for expenses incurred by any individu-

al who is not an employee of the State approving agency.

(1) *Salaries.* Salaries for which reimbursement may be authorized under contract will not be in excess of the established rate of pay for other employees of the State having comparable or equivalent duties and responsibilities and will further be limited to the actual salary expense incurred by the State.

(2) *Travel.* Travel expenses for which reimbursement may be authorized under contract will be determined on the basis of expenses allowable under applicable State laws or travel regulations of the State or agency and will be for travel actually performed by employees specified under the terms of the contract. Reimbursement for travel will be provided only to cover actual expenses for transportation, meals, lodging, and local telephone calls, or the regular per diem allowance in lieu thereof. In claiming reimbursement for travel authorized under the terms of a contract, all claims must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency. Reimbursement will be made for expenses of attending out-of-State meetings and conferences only where the travel is performed upon prior approval and at the request of the Director, Education and Rehabilitation Service.

(3) *Administrative expenses.* An allowance for administrative expenses for which payment may be authorized will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	Allowable for administrative expense
\$5,000 or less	\$630.
Over \$5,000 but not exceeding \$10,000	\$1,134.

Total salary cost reimbursable	Allowable for administrative expense
Over \$10,000 but not exceeding \$35,000.	\$1,134 for the first \$10,000 plus \$1,050 for each additional \$5,000 or fraction thereof.
Over \$35,000 but not exceeding \$40,000.	\$6,862.
Over \$40,000 but not exceeding \$75,000.	\$6,862 for the first \$40,000 plus \$908 for each additional \$5,000 or fraction thereof.
Over \$75,000 but not exceeding \$80,000.	\$13,608.
Over \$80,000	\$13,608 for the first \$80,000 plus \$793 for each additional \$5,000 or fraction thereof.

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

(i) The work has a direct relationship to the requirements of chapters 32, 34, 35, or 36 of title 38, United States Code, and

(ii) The Director, Education and Rehabilitation Service has approved the subcontract in advance. (38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)

(d) *Nonreimbursable expenses.* Reimbursement will not be provided under reimbursement contracts for:

(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Veterans Administration regulations.

(2) Supplies, equipment, printing, postage, telephone services, rentals, and other miscellaneous items or a service furnished directly or indirectly.

(3) Except as provided in paragraph (c)(2) of this section, the salaries and travel of personnel while attending training sessions, or when they are engaged in activities other than those in connection with the inspection, approval, or supervision of educational institutions.

(4) The supervision of educational institutions which do not have veterans or eligible persons enrolled.

(5) Expenses incurred in the administration of an educational program which are costs properly chargeable as tuition costs, such as the development of course material or individual educational programs, teacher training or teacher improvement activities, ex-

penses of coordinators, or administrative costs, such as those involving selection and employment of teachers. (This does not preclude reimbursement for expenses of the State agency incurred in the development of standards and criteria for the approval of courses under the law.)

(6) Expenses of a State approving agency for inspecting, approving, or supervising courses where such agency is responsible for establishing, conducting, and supervising the courses approved.

(7) Any expense for supervision or other services to be covered by contract which are already being reimbursed or paid from tuition funds under this law.

(e) *Agency operating plan.* A request by a State approving agency for reimbursement under the law will be subject to the requirements of 41 CFR 8-7.5101-8 as to "Equal Opportunity". The request will be accompanied by the proposed plan of operation and the specific duties and responsibilities of all personnel for which reimbursement of salaries and travel expense is required.

(1) Personnel requirements for which reimbursement is to be provided will be determined on the basis of estimated workloads as agreed upon between the Veterans Administration and the State agency. Such agreements will be subject to constant review and any necessary adjustment.

(2) Workloads will be determined upon three factors:

(i) Inspection and approval visits, (ii) supervisory visits, and (iii) special visits at request of the Veterans Administration.

(f) *Contract compliance.* Reimbursement under each contract or agreement will be conditioned upon compliance with the standards and provisions of the contract and the law. If it is determined that the State has failed to comply with the standards and provisions of the law and with the terms of the reimbursement contract, the station head will withhold reimbursement for claimed expenses under the contract. In any instance in which the State takes exception to the field station action, the matter will be referred to the Director, Education and Reha-

bilitation Service, for review. (38 U.S.C. 1774)

[31 FR 6774, May 6, 1966, as amended at 40 FR 42880, Sept. 17, 1975; 43 FR 35296, Aug. 9, 1978; 44 FR 62498, Oct. 31, 1979]

§ 21.4154 Report of activities.

(a) *General.* Each State approving agency entering into a contract or agreement pursuant to § 21.4153 shall submit a report of activities to the Veterans Administration on September 30, 1978 for the preceding 12-month period and each month thereafter.

(b) *Content of the report.* The report shall be in the form prescribed by the Administrator and shall detail the activities of the State approving agency under the agreement or contract during the preceding month as well as from the beginning of the fiscal year through the end of that month. Each report shall describe the services performed and the determinations made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Veterans Administration. The content of the report shall include as a minimum:

(1) A report of the number of active schools and establishments with approved courses in the jurisdiction of the State approving agency;

(2) The actions taken by the State approving agency on applications for approval of course revisions;

(3) The actions taken by the State approving agency on applications for approval of new courses made by schools which previously have had courses approved;

(4) The actions taken by the State approving agency on applications for approval of new courses made by schools which have not had any courses approved previously;

(5) The number of inspections, approval and supervisory visits to schools made by the State approving agency;

(6) The actions taken by the State approving agency with respect to schools and establishments which the State approving agency found to have deficiencies;

(7) The actions taken by the State approving agency with respect to

schools and establishments which the Veterans Administration found to have deficiencies;

(8) The actions taken by the State approving agency in promoting jobs for veterans programs; and

(9) The number of man-months used by the State approving agency pursuant to the contract. (38 U.S.C. 1774; Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62498, Oct. 31, 1979]

SCHOOLS

§ 21.4200 Definitions.

(a) *School, educational institution, institution.* (1) For chapter 34 these terms mean any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults. It also includes training establishments as defined in paragraph (c) of this section. (38 U.S.C. 1652)

(2) For Chapter 35 these terms mean any public or private secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution or any other institution if it furnishes education at the secondary school level or above. They include institutions which provide specialized vocational courses for the mentally or physically handicapped generally recognized as on the secondary school level or above. It also includes training establishments as defined in paragraph (c) of this section (38 U.S.C. 1701(a)(6)).

(b) *Divisions of the school year.* (1) "Ordinary School Year" is generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(2) "Term," any regularly established division of the ordinary school year under which the school operates.

(3) "Quarter," a division of the ordinary school year, usually a period from 10 to 13 weeks long.

(4) "Semester," a division of the ordinary school year, usually a period from 15 to 19 weeks long.

(5) "Summer term", the whole of the period of instruction at a school which takes place between ordinary school years. A summer term may be divided into several summer sessions. (38 U.S.C. 1780(a))

(6) "Summer session", any division of a summer term. (38 U.S.C. 1780(a))

(c) *Training establishment.* The term means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training (38 U.S.C. 1652(e), 1701(a)(9); Pub. L. 92-540, 86 Stat. 1074).

(d) *External degree.* This term means a standard college degree given by an accredited college or university based on satisfactory completion of a prescribed program of independent study. The program may require occasional attendance for a workshop or seminar and may include some regular residence course work.

(e) *Standard college degree.* The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

(2) An institution of higher learning that is a "candidate" for accreditation, as that term is used by the regional or the national accrediting agencies; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383)

(f) *Undergraduate college degree.* The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are asso-

ciate degrees, bachelors' degrees and first professional degrees.

(g) *Standard class session.* The term means the amount of time a student is required, in a regular quarter or semester, to spend in class per week for one quarter or one semester hour of credit. Normally a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory training, or 3 hours of workshop training.

(h) *Institution of higher learning.* The term means a college, university, or similar institution, including a technical or business school, offering post-secondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency, or, it is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution. Such term shall include a hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a postsecondary degree. (38 U.S.C. 1652; Pub. L. 94-502, 90 Stat. 2383)

(i) *Audited course.* The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See § 21.4252(i). (38 U.S.C. 1780(a)(3); Pub. L. 94-502, 90 Stat. 2383)

(j) *Nonpunitive grade.* The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit

toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See § 21.4135(e). (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383)

(k) *Punitive grade.* The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the non-punitive grade, the punitive grade does affect the criteria to be met by the student for graduation, i.e., it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See § 21.4135(e). (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383)

(l) *Drop-add period.* The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students. (38 U.S.C. 1780(a)(4); Pub. L. 94-502, 90 Stat. 2383)

(m) *Normal commuting distance.* Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations. (38 U.S.C. 1789(c); Pub. L. 94-502, 90 Stat. 2383)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13403, Sept. 23, 1967; 35 FR 9815, June 16, 1970; 38 FR 14935, June 7, 1973; 38 FR 32579, Nov. 27, 1973; 39 FR 43221, Dec. 11, 1974; 40 FR 31762, July 29, 1975; 41 FR 26682, June 29, 1976; 43 FR 35296, Aug. 9, 1978; 45 FR 48887, July 22, 1980]

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section no enrollment in any course may be approved for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration pursuant to title 38, United States Code, and/or grants of any other Federal agency. This restriction may be waived in whole or part.

(b) *Affected schools.* The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses.* The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(1) Any farm cooperative course;

(2) Any course of Special Assistance for the Educationally Disadvantaged, offered pursuant to subchapter V, chapter 34, title 38, United States Code;

(3) Any approved course offered under contract with the Department of Defense which is on or immediately adjacent to a military base, which has been approved by the State approving agency of the State where the base is located or the State of the parent school if the course is offered overseas, and which either:

(i) Is available only to military personnel and their dependents, or

(ii) Is available only to military personnel, their dependents, and civilian employees of the base located in a State, or

(iii) Is available only to persons authorized by the base commander to attend the course provided the base is located outside the United States;

(4) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities;

(5) Any course if the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution) except that the Director of the Veterans Administration field station of jurisdiction shall apply the provisions of paragraph (a) of this section if he or she has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(d) *Application for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(5) of this section. To obtain an exemption as stated in paragraph (c)(5) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(e) *Computing the 85-15 percent ratio—(1) Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added

to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(a) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(b) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85-15 percent requirement separately,

unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of Federal or institutional aid.

(ii) All graduate students in receipt of any Federal aid (other than Veterans Administration benefits) and any institutional aid.

(iii) Students in receipt of all types of Federal aid (other than Veterans Administration benefits). However, BEOG (Basic Educational Opportunity Grant) and SEOG (Supplementary Educational Opportunity Grant) recipients shall be counted as supported after notice to the school by the Veterans Administration.

(iv) Undergraduate and noncollege degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike, and the students do not have to be counted as supported pursuant to paragraph (e)(2)(iii) of this section.

(3) *Calculation.* (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Veterans Administration student in a correspondence course has not completed a lesson nor

made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85-15 percent ratio.

(ii) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to non-supported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All courses offered at a flight school which are approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Similarly, all courses offered at a flight school which are not approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Hours of training or tuition charges:

(a) In the private pilot's course shall be excluded;

(b) For students enrolled in courses approved under Part 141, Title 14, Code of Federal Regulations (the Federal Aviation Administration regulations) shall be actual hours of logged instructional flight time or charges; and

(c) For students enrolled in courses not approved under Part 141, Title 14, Code of Federal Regulations such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.

(4) *Relief from complete calculations.* If 35 percent or fewer of the students in a course, not otherwise exempt from the provisions of paragraph (a) of this section, offered by an institution of higher learning or non-college degree school receive Veterans Administration educational benefits, the percentage of the school's total enrollment in all courses in all locations receiving BEOG and SEOG totals 85 percent or less the school need make no further calculations. This relief from complete calculations is for application only after the Veterans Administration has notified the school that BEOG and SEOG recipients are considered to be supported students as

provided in paragraph (e)(2) of this section.

(f) *Reports.* (1) All calculations needed to support the exemption found in paragraph (c)(5) of this section to the requirements of paragraph (a) of this section must be submitted by a school to the Veterans Administration no later than 30 days after the beginning of the first term for which the school wishes the exemption to apply if the school is organized on a term, quarter or semester basis, or no later than 30 days after the beginning of the first calendar quarter for which the student wishes the exemption to apply if the school is not organized on a term, quarter or semester basis. A school having received an exemption found in paragraph (c)(5) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance:

(i) Unless the Director of the VA field station of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(2) All calculations made pursuant to paragraphs (e) (3) and (4) of this section must be submitted by the school to the Veterans Administration no later than 30 days after the beginning of each regular school term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first, if the school is organized on a term, quarter or semester basis. If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Ad-

ministration no later than 30 days after the end of each calendar quarter.

(g) *Effect of the 85-15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans in a course on the basis of the school's submission of the most recent computation showing that either the 85-15 percent ratio is satisfactory or that the course is exempt under paragraph (c)(5) of this section. However, no benefit will be paid when the most recent computation establishes that the course neither has a satisfactory 85-15 percent ratio nor is exempt under paragraph (c)(5) of this section, except for those enrollments which have a beginning date prior to or the same as the date the school completed this computation. If a school fails to submit a timely computation, no benefits will be paid for any enrollment with beginning dates beyond the expiration of the allowable computation period. Enrollments with later beginning dates may be processed only after the school submits a certification either that the proper ratio has been reestablished for the course, or that the course is exempt from the requirement pursuant to paragraph (c)(5) of this section. When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment submitted after reestablishment must be individually computed into the ratio to insure that the 85 percent limitation is not again immediately exceeded. Individual computations will be required until the end of the term for which the ratio was reestablished or until the end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(2) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled

in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education and Rehabilitation Service through the Director of the Veterans Administration field station of jurisdiction. A school desiring a waiver of the provisions of paragraph (a) of this section for any other course may apply to the Director of the Veterans Administration field station of jurisdiction.

(1) When applying a school must submit sufficient information to allow the Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria:

(i) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the Director, Education and Rehabilitation Service, or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published, in Part 169, Subpart B, Title 45, Code of Federal

Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(iii) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the Veterans Administration.

(iv) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the director's recommendation be forwarded to the Director, Education and Rehabilitation Service for administrative review. (38 U.S.C. 1673(d); Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62498, Oct. 31, 1979]

§ 21.4202 Overcharges; restrictions on enrollments.

(a) *Overcharges.* When it is found that a school has charged or received from any veteran or eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced nonveterans or noneligible persons enrolled in the same course, the school may be disapproved for enrollment of any person not already enrolled in the school. A school disapproved for Chapter 35 purposes before March 3, 1966, is considered disapproved for Chapter 34 purposes for enrollment of any veteran not already enrolled (38 U.S.C. 1790). See § 21.4207.

(b) *Restrictions on enrollments.* A school will be disapproved for further enrollments or reenrollments, and educational assistance allowance to veterans or eligible persons already enrolled will be discontinued when one

or more of the following conditions has been found to exist:

(1) The school has willfully and knowingly submitted a false report or certification concerning a student or his or her course of education which has or could result in an improper payment of allowances.

(2) The school has willfully and knowingly failed to report to the Veterans Administration excessive absences, discontinuance, or interruption of education, which has resulted or could result in improper payment of allowances.

(3) The school through gross negligence has submitted improper or incorrect reports which have resulted or could result in improper payment of allowances. This condition will not be found to exist where:

(i) The improper report occurs only in an isolated instance or instances; or

(ii) It is the first occurrence and the school has not been previously notified in writing; or

(iii) The improper report or reports represent a very small proportion of the reports submitted by the school and may be attributed to clerical errors and are shown not to be the result of failure upon the part of the school to provide and maintain a recording and reporting procedure which under normal circumstances would result in proper reports to the Veterans Administration.

(4) The school has, after being notified in writing of a violation of a provision of law or of failure of a course to meet the specific requirements of law other than approval criteria, failed to correct the situation within 30 days of date of such notice or has knowingly and willfully repeated the violation.

(5) The school, after having been disapproved under paragraph (a) of this section for the enrollment of any veteran or eligible person not already enrolled therein, has willfully and knowingly repeated the overcharge.

(6) The school fails or refuses to make available for examination to duly authorized representatives of the Government records and accounts pertaining to the education of veterans and eligible persons enrolled therein under chapters 34 and 35.

(7) The requirements of §§ 21.4250, 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, and 21.4264 are not being met in respect to a substantial number of veterans and eligible persons, written notice having been given to the State approving agency as to specific violations and such violations have not been eliminated within 30 days following such notice or 60 days following such notice when the station head determines that conditions warrant allowing the additional time to take corrective action.

(c) *Restrictions; proprietary schools.* Enrollment will not be approved for any veteran or eligible person under the provisions of chapter 34 or 35 respectively, in any proprietary school of which the veteran or eligible person is an official authorized to sign certificates of enrollment or monthly certificates of attendance, an owner or an officer.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13403, Sept. 23, 1967; 37 FR 6679, Apr. 1, 1972; 38 FR 14935, June 7, 1973; 39 FR 43221, Dec. 11, 1974; 43 FR 35300, Aug. 9, 1978]

§ 21.4203 Reports by schools; requirements.

(a) *General.* (1) Educational institutions are required:

(i) To report promptly the entrance, reenrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled;

(ii) To verify enrollment for each veteran and eligible person receiving an advance payment; and

(iii) To verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or education loan.

(2) Nothing in this section or in any other section of Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree. (38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95-202, 91 Stat. 1433)

(b) *Entrance or reenrance.* The certification must clearly specify the course. Upon receipt of a certification of enrollment, an official authoriza-

tion will be issued showing the beginning and ending dates of each period for which an allowance may be paid. The authorization will be for the period of enrollment or the extent of the eligible person's entitlement whichever is the lesser.

(1) Schools organized on a term, quarter, or semester basis shall generally report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If a certification covers two or more terms, the school will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month. No allowances are payable for these intervals. The school will report the period between each term, quarter, or semester, if the eligible veteran or student elects not to be paid for the intervals between terms. Where the student is a veteran or eligible person pursuing a program on a less than half-time basis or is a serviceman or servicewoman, a separate enrollment certification will be required for each term, quarter, or semester.

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(a) If the Director has authorized payment due to an emergency school closing, resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service, will decide if payments may continue. His or her decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary. (38 U.S.C. 1780(a))

(b) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in

writing to the Director of the VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a))

(ii) Where a veteran or an eligible person, who is pursuing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution. (38 U.S.C. 1780)

(2) Schools organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the school closes for any interval designated in the school's approval data as breaks between school years. No allowances are payable for these intervals.

(3) Where the veteran or eligible person is enrolling in a farm cooperative course, the school's certification will include a report of the dates of the prescheduled classroom instruction.

(4) Where the veteran or eligible person is enrolling for independent study leading to a standard college degree, the school's certification will include enrollment date, established charges for tuition and fees, and the ending date for completion of the study being certified. If the school has no prescribed maximum time for completion, the certification must include an ending date based on the school's estimate of the time for completion.

(c) *Nonpunitive grades.* A school may assign a nonpunitive grade for a course or subject in which the veteran or eligible person is enrolled even

though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the school must report the assignment of the nonpunitive grade in time for the Veterans Administration to receive it before the earlier of the following dates is reached:

(1) Thirty days from the date on which the school assigns the grade, or

(2) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned. (38 U.S.C. 1784(a))

(d) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or eligible person interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, this fact must be reported to the Veterans Administration by the school.

(1) If the course in which the veteran or eligible person is enrolled does not lead to a standard college degree and the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (d) (3) or (4) of this section, the school shall submit the report required by this paragraph as follows:

(i) If the quarterly certification of attendance that normally is required for the student is due to be received by the Veterans Administration within 30 days of the date on which the change in status or the change in numbers of hours of credit or attendance occurs, the report will be included on the quarterly certification.

(ii) If no quarterly certification is due to be received by the Veterans Administration within 30 days of the date on which the change of status or change in the number of hours of credit or attendance occurs, the school will report the change in time for the Veterans Administration to receive the report within 30 days of the date on which the change occurs. This report shall include a certification of the absences of the student since the last quarterly certification has been filed or, if no quarterly certification has been filed, the report shall include a certification of the absences of the

student since the course began. (38 U.S.C. 1784(a))

(2) If the course in which the veteran or eligible person is enrolled leads to a standard college degree and the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (d) (3) or (4) of this section, the school will initiate a report of the change in time for the Veterans Administration to receive the report within 30 days of the date on which the change occurs. (38 U.S.C. 1784(a))

(3) If the enrollment of the veteran or eligible person has been certified by the school for more than one term, quarter or semester and the veteran or eligible person interrupts or terminates his or her training at the end of a term, quarter or semester within the certified period of enrollment, the school shall report the change in status to the Veterans Administration in time for the Veterans Administration to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester. (38 U.S.C. 1784(a))

(4) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the school must report the change in status or change in the number of hours of credit or attendance to the Veterans Administration in time for the Veterans Administration to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first. (38 U.S.C. 1784(a))

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. Chapter 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. Chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly. (38 U.S.C. 1780)

(f) *Certification—(1) Courses not leading to a standard college degree. A*

certification must be submitted quarterly for each veteran and eligible person enrolled in a course not leading to a standard college degree, even if the course is pursued on a quarter, semester or term basis or even if the course is measured on a credit-hour basis, except for those courses pursued on less than one-half time basis or by servicemen or servicewomen while on active duty, and except as provided in paragraphs (e) and (g) of this section. (See § 21.4204.) A report also will be required before release of the final allowance check. The report will consist of a certification containing the information required for release of payment, signed by the veteran or eligible person and the school on or after the final date of the reporting period. The date on which each person signed must be clearly shown. The only exception to the requirement of two signatures is a certification of interruption of training when the veteran or eligible person is not available for signature.

(2) *Courses leading to a standard college degree.* Schools which have veterans or eligible persons enrolled in courses which lead to a standard college degree are not required to submit periodic certifications for students enrolled in such courses. Certifications are, however, required under paragraphs (b), (c), (d) and (h) of this section.

(3) *Apprentice or other on-the-job training.* A certification of attendance must be submitted monthly during the period of enrollment in the same manner as certifications required in paragraph (f)(1) of this section.

(g) *Flight training courses.* Where the course consists exclusively of flight training, the school will report by an endorsement on the veteran's certification the type and number of hours of actual flight training received by, and the cost thereof to, the veteran. Such reports may be submitted monthly.

(h) *Unsatisfactory progress or conduct.* At times the unsatisfactory progress or conduct of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported

in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to the Veterans Administration, if such a report is required, within the time allowed by paragraphs (h) (1) and (2) of this section. (38 U.S.C. 1674)

(1) A veteran's or eligible person's progress may become unsatisfactory as a result of the grades he or she receives. The criteria used to determine that the grades received have caused the student's progress to become unsatisfactory may be either those criteria dealing with the unsatisfactory punitive grades found in § 21.4377(a)(2), or the regularly prescribed standards and practices of the school. The school shall report such unsatisfactory progress to the Veterans Administration in time for the Veterans Administration to receive it before the earlier of the following dates is reached.

(i) Thirty days from the date on which the school official, who is responsible for determining whether a student is making progress, first received the final grade report which establishes that the veteran either is not progressing satisfactorily, or

(ii) Sixty days from the last day of the enrollment period during which the veteran or eligible person earned the grades that caused him or her not to meet the satisfactory progress standards. (38 U.S.C. 1674)

(2) If the unsatisfactory progress or conduct of the veteran or eligible person is caused by any factors other than the grades which he or she receives, the school shall report the unsatisfactory progress or conduct to the Veterans Administration in time for the Veterans Administration to receive it within 30 days of the date on which the progress or conduct of the veteran or eligible person becomes unsatisfactory. See also § 21.4277. (38 U.S.C. 1674)

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 38 FR 14935, June 7, 1973; 38 FR 32579, Nov. 27, 1973; 39 FR 31903, Sept. 30, 1974; 39 FR 43221, Dec. 11, 1974; 40 FR 31762, July 29, 1975; 41 FR 26682, June 29, 1976; 41 FR 47929, Nov. 1, 1976; 43 FR 35300, Aug. 9, 1978; 44 FR

62501, Oct. 31, 1979; 45 FR 43171, June 26, 1980]

§ 21.4204 Periodic certifications.

Educational assistance allowance is payable on the basis of a required certification concerning the pursuit of a course during the reporting period.

(a) *Reports by schools, veterans and eligible persons.* For a veteran or eligible person enrolled in a course which leads to a standard college degree, excepting those on active duty and veterans or eligible persons pursuing the course on a less than half-time basis there must be verification of continued enrollment in and pursuit of the course for the entire enrollment period. Verification of continued enrollment will be made by a Veterans Administration representative in direct contact with the school at least once a year and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a veteran or eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying the Veterans Administration of the veteran's or eligible person's completion of course as scheduled or earlier termination date, will be accepted to terminate payments accordingly. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203 (e), (f) or (g).

(b) *Requirements.* The certifications required by § 21.4203 and paragraph (a) of this section will include a report on the following items when applicable:

(1) Continued enrollment in and pursuit of the course.

(2) Absences. See § 21.4205.

(3) Conduct and progress. See § 21.4277.

(4) Date of interruption or termination of training.

(5) Changes in number of semester hours or clock hours of attendance.

(6) Any other changes or modifications in the course as certified at enrollment.

(c) *Term, quarter, or semester.* For a course which does not lead to a standard college degree, if a school orga-

nized on a term, quarter, or semester basis has reported enrollment:

(1) For the ordinary school year or the complete course, the periodic certification will show the intervals between terms, quarters, or semesters as absences.

(2) By term, quarter, or semester, the periodic certification will not cover the intervals between terms, quarters, or semesters.

(d) *Year-round courses.* The periodic certifications will show any vacation period or interval between periods of instruction as absences. The periodic certification will not cover the period between school years.

(e) *Farm cooperative courses.* The quarterly certification will cover only those periods of classroom instruction which are included in the prescheduled institutional portion of the course.

[31 FR 6774, May 6, 1966, as amended at 32 FR 3452, Mar. 2, 1967; 34 FR 845, Jan. 18, 1969; 35 FR 9816, June 16, 1970; 38 FR 14936, June 7, 1973; 39 FR 31903, Sept. 3, 1974; 41 FR 47929, Nov. 1, 1976]

§ 21.4205 Absences.

Absences must be reported on the quarterly certification of pursuit of a course which does not lead to a standard college degree.

(a) *General.* Absence will be charged for a full day when the veteran or eligible person did not attend any scheduled class on that day. Tardiness will be charged when the veteran or eligible person was late for the start of the school day. A partial day of absence will be charged for any period of absence during or at the end of a day.

(b) *Maximum allowable absences.* Maximum allowable absences will be determined as provided in this paragraph.

(1) For a 12-month course requiring attendance for 5 or more days a week, 30 days.

(2) For a 12-month course requiring attendance for 5 or more days a week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(3) If the length of the course is not 12 months or a multiple of 12, allowable absences will be figured separately for each 12-month period and pro

rata for any period which is less than 12 months.

(4) In computing pro rata allowable absences a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(5) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(c) *Reporting.* (1) Veterans and eligible persons must report each full day of absence from scheduled attendance as well as days when the school was closed for local and school holidays and, if reported enrollment was on an ordinary school year basis, intervals between terms, quarters, or semesters. When the school is closed for the weekend those days will not be reported nor will legal holidays established by Federal or State law or customary vacation periods connected with them be reported if the school is closed. These customary vacation periods will be reasonable periods identified as a holiday vacation on the school approval literature. Generally a reasonable period will be interpreted to mean not more than 1 calendar week at Christmas and New Years and shorter periods of time in connection with other legal holidays. However, if classes are normally scheduled for Saturday and Sunday, absences must be reported. At the discretion of the Director of the VA field station of jurisdiction, days of absence will not be reported for days of nonattendance within a certified period of enrollment during which the school is closed under an established policy based upon an Executive order of the President or due to an emergency situation. (38 U.S.C. 1780(a))

(i) If the Director has authorized the nonreporting of days of absence as the result of an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service will decide if absences will continue not to be reported. His or her decision will be based on a full assessment of the strike situation. Payment of educational assistance will be terminated if in his or her judgment the school

closing will not be temporary. (38 U.S.C. 1780(a))

(ii) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a))

(2) The school will verify the full days of absence reported and endorse the report. In addition, the school will convert partial days of absence to full days in accordance with the following formula and report the accumulated total.

(i) Compute the average hours of daily attendance. (Divide the hours of required attendance per week by the days of required attendance per week.)

(ii) Total the absences of less than a full day which occurred during the month (see paragraph (c)(3) of this section).

(iii) Divide the total hours of absence for the month (paragraph (c)(2)(ii) of this section) by the average hours of daily attendance (paragraph (c)(2)(i) of this section) to determine the full days of absence to be reported. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(3) An occasional tardiness (not more than two per week) of one-half hour or less will not be counted if it is excused by the school. Tardiness which is not excused and tardiness of more than one-half hour, whether excused or not, will be counted as one or more hours of absence. Absences during any portion of the day will be counted, whether more or less than an hour. All early departures will be counted, even though excused. Except for an occasional tardiness of one-half hour or less which is excused by the

school, any absence of less than an hour will be counted as a full hour of absence.

(4) For a farm cooperative course the absences to be reported by the veteran or eligible person and verified by the school will be those days of nonattendance which occur during a period of the prescheduled classroom instruction.

(5) Where a veteran or eligible person, who is pursuing a course not leading to a standard college degree, transfers between consecutive school terms within a school year from one approved institution to another institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of the educational assistance allowance, be considered to be enrolled at the first institution during the interval if the interval does not exceed 30 days following the termination date of the school term of the first institution, but such periods shall be counted as absences for the purposes of this section. (38 U.S.C. 1780(a))

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 34 FR 845, Jan. 18, 1969; 39 FR 31903, Sept. 3, 1974; 39 FR 43221, Dec. 11, 1974; 40 FR 31762, July 29, 1975; 44 FR 25649, May 2, 1979]

§ 21.4206 Reporting fee.

The Veterans Administration may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 38 U.S.C. Chapter 34, 35, or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying \$7 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year. (38 U.S.C. 1784(b); Pub. L. 95-202, 91 Stat. 1433)

(b) For any school or joint apprenticeship training committee where the

peak enrollment of veterans and eligible persons varies more than 15 percent from the enrollment on October 31, another date may be established as representative of peak enrollment. (38 U.S.C. 1784(b); Pub. L. 93-508; 88 Stat. 1578)

(c) An additional \$4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional \$4 fee. In order to receive this fee, the institution shall submit to the Veterans Administration a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Veterans Administration. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Veterans Administration. (38 U.S.C. 1784, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Veterans Administration against any liability of the educational institution for any overpayment which the Veterans Administration has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction. (38 U.S.C. 1784; Pub. L. 95-202, 91 Stat. 1433)

[32 FR 13404, Sept. 23, 1967, as amended at 40 FR 31762, July 29, 1975; 44 FR 62501, Oct. 31, 1979]

§ 21.4207 Failure of school to meet requirements.

When the Veterans Administration discovers facts which appear to warrant a finding that the school is in violation of specific criteria of 38 U.S.C. Chapters 34, 35, or 36, including fail-

ure to meet requirements for approval of a course offered to a veteran or eligible person and institution of policies regarding payment of tuition and fees so as to deny the benefits of the advance payment program, the facts will be referred to the field station Committee on Educational Allowances.

(a) *Committee on Educational Allowances.* The Committee on Educational Allowances in the field station is authorized to make recommendations on action to be taken for the purposes of this section, subject to approval by the station head. The committee will include a minimum of three staff members designated by the station head. The recommendation of the committee, when approved by the station head, becomes the final administrative decision of the Veterans Administration unless an application for review is filed as provided in paragraph (d) of this section.

(b) *Hearings.* A hearing may be held at the request of the school. No expenses incurred for counsel or witnesses will be paid by the Veterans Administration.

(c) *Referral to Central Office by the field station.* The decision will be made by Central Office and the issue shall be referred to the Director, Education and Rehabilitation Service if:

(1) The recommendation of the Committee on Educational Allowances is not unanimous, or

(2) The station head does not approve the recommendation of the Committee.

(d) *Request by the school for review.* The school may file an application for review by Central Office of any decision rendered under paragraph (a) of this section. The application must be received in Central Office within 30 days after the date of notice of the decision. See § 21.4208.

(e) *Effective date.* If the decision of the field station or of Central Office includes disapproving the school for the enrollment of any veteran or eligible person not already enrolled in the school, all enrollments which begin after the effective date of the decision shall be disapproved. If the decision includes discontinuing payments of educational assistance allowance to veterans and eligible persons, the ef-

fective date of the discontinuance shall be determined by § 21.4135. The effective date for decisions of the field station or of Central Office will be determined as follows:

(1) In all instances when, on the date a decision is reached by a field station or Central Office, no payments are being made to persons enrolled in the school because the Director of the field station has suspended the payments as provided by § 21.4134, and the decision results in the discontinuance of educational assistance to veterans and eligible persons, the effective date of the decision will be the date the Director first suspended payments unless the decision specifically provides for a later date.

(2) When the effective date of a field station or Central Office decision is not determined by paragraph (e)(1) of this section it shall be:

(i) The date the Director of the field station of jurisdiction approves the unanimous decision of the Committee on Educational Allowances, if no review by Central Office is required;

(ii) The date the Director of the field station of jurisdiction originally approved the recommendation of the Committee on Educational Allowances, if the decision is reviewed by Central Office, pursuant to paragraph (d) of this section, and approved;

(iii) The date the Director of the field station of jurisdiction originally approved the recommendation of the Committee on Educational Allowances, if the decision is reviewed by Central Office, pursuant to paragraph (d) of this section, and the station's decision is reversed by a Central Office decision; or

(iv) The date of receipt by the field station of the decision of Central Office rendered pursuant to paragraph (c) of this section. See § 21.4208. (38 U.S.C. 1790)

(f) *Reapproval of enrollments.* Educational assistance allowance which was finally discontinued by reason of the provisions of this section will not be resumed without prior approval at the level of authority where the final decision was made.

[31 FR 6774, May 6, 1966, as amended at 38 FR 14936, June 7, 1973; 39 FR 1592, Jan. 11,

1974; 42 FR 14735, Mar. 16, 1977; 45 FR 31063, May 12, 1980]

§ 21.4208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and make recommendations to the Director, Education and Rehabilitation Service, in connection with such matters which are before him or her for final administrative determination under §§ 21.4201, 21.4202, or 21.4207.

(b) *Composition of panel.* The panel will consist of one staff employee from the office of the Director of Education and Rehabilitation Service, and two persons who are not employees of the Veterans Administration chosen from a group of consultants selected for that purpose.

(c) *Disposition of matters reviewed by the panel.* The concurrence of the Director with the recommendation of the panel will constitute the final administrative decision of the Veterans Administration. If the Director does not concur with the recommendation of the panel, the final decision will be made by the Chief Benefits Director.

[31 FR 6774, May 6, 1966, as amended at 37 FR 10442, May 23, 1972; 43 FR 35300, Aug. 9, 1978]

§ 21.4209 Examination of records.

(a) *Availability.* Notwithstanding any other provision of law, the records and accounts of educational institutions pertaining to eligible veterans or eligible persons who received educational assistance under chapters 31, 32, 34, 35, or 36, title 38, United States Code, as well as the records of other students which are necessary to enable the Veterans Administration to ascertain institutional compliance with the requirements of these chapters, shall be available for examination by duly authorized representatives of the Government. (38 U.S.C. 1790; Pub. L. 94-502, 90 Stat. 2383)

(b) *Type of records.* Each school will upon request of duly authorized representatives of the Government make

available for examination all appropriate records and accounts, including but not limited to:

(1) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all veterans and eligible persons and from other students similarly circumstanced.

(2) Records of previous education or training of veterans and eligible persons at the time of admission as students and records of advance credit, if any, granted by the school at the time of admission.

(3) Records of the veteran's or eligible person's grades and progress.

(4) Records of all advertising, sales or enrollment materials as required by § 21.4252(h) and section 1796(b), title 38, United States Code.

(5) Records and computations showing compliance with the requirements of § 21.4201 regarding the 85-15 percent ratio of students for each course.

(6) Records necessary to demonstrate compliance with the requirements of § 21.4252(e) pertaining to the time necessary to complete a correspondence course.

(7) Records necessary to demonstrate compliance with the requirements of § 21.4252(g) pertaining to employment of graduates of the course.

(c) *Below college level, apprentice, and other on-the-job.* The school having veterans or eligible persons enrolled in a course or courses which do not lead to a standard college degree will make available, in addition to the records and accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness. Each training establishment which has enrolled veterans under Chapter 34 or eligible persons under Chapter 35 will also make available payroll records.

(d) *Nonaccredited courses.* The school having veterans or eligible persons enrolled in nonaccredited courses will make available, in addition to the records and accounts required in paragraphs (b) and (c) of this section the following:

(1) Records of interruptions for unsatisfactory conduct or attendance.

(2) Records of refunds of tuition, fees and other charges made to a vet-

eran or eligible person who fails to enter the course or withdraws or is discontinued prior to completion of the course.

(e) *Nonavailability.* Failure to make such records available as provided in this section will be grounds for discontinuing the payment of educational assistance allowance or special training allowance.

(f) *Retention of records.* The records and accounts, including those pertaining to students not receiving benefits from the Veterans Administration, as described in this section, pertaining to each period of enrollment of a veteran or eligible person, will be kept intact and in good condition at the school for at least 3 years following the termination of such enrollment period. Longer retention will not be required unless a written request is received from the General Accounting Office or the Veterans Administration not later than 30 days prior to the end of the 3-year period.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 38 FR 14936, June 7, 1973; 43 FR 35300, Aug. 9, 1978]

PROGRAMS OF EDUCATION

§ 21.4230 Requirements.

A program of education will consist of a combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional, or vocational objective. Under chapter 34 it may also consist of such subjects or courses which are generally acceptable to meet requirements for more than one such objective if all the objectives pursued are generally recognized as being related to a single career field. It also means any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of section 402(a) of the Economic Opportunity Act of 1964 (42 U.S.C. 2902(a)). (38 U.S.C. 1652(b), 1670, 1691(a); Pub. L. 91-219, 84 Stat. 76; Pub. L. 91-584, 84 Stat. 1575)

(a) *Educational.* An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment.

(b) *Professional or vocational.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(c) *Selection; chapter 34.* A program of education under chapter 34 selected by an eligible veteran or serviceman or servicewoman will be approved if it meets the requirements of paragraph (a) or (b) of this section and the veteran or serviceman or servicewoman is not already qualified for the objective for which the program of education is offered, except:

(1) A course or courses at the secondary school level for persons who have previously received a secondary school diploma or an equivalency certificate and deficiency courses needed or required to qualify for an educational or training program may be authorized under the provisions of § 21.4235, and

(2) An eligible veteran may receive up to 6 months educational assistance, or the equivalent in part-time assistance, for training in a program of education in which the veteran is already qualified, provided that the program pursued is refresher training to permit the veteran to update knowledge and skills and to be instructed in the technological advances which have occurred in the veteran's field of employment during and since the veteran's period of service. The program of education must be a course to be taken after the date of the veteran's discharge or release from active duty. It may be to update skills learned either during or prior to service but not for skills first acquired after discharge from service. Educational assistance allowance paid under this subparagraph will be charged against the veteran's basic entitlement.

(d) *Provisional; Chapter 35; child.* When application for educational as-

sistance under Chapter 35 is approved provisionally the eligible child and, if a minor, the parent or guardian also will be informed of the need to develop a program of education consistent with paragraphs (a) and (b) of this section. In those cases where the eligible child has been accepted for, or is pursuing, courses which lead to a standard college degree at an approved institution, an educational plan may be submitted and approved without counseling if it meets the requirements of paragraphs (a) and (b) of this section (38 U.S.C. 1713, 1720; Pub. L. 92-540, 86 Stat. 1074).

(e) *Selection; chapter 35; wife, husband, widow, widower.* A program of educational assistance under chapter 35 selected by an eligible wife, husband, widow or widower will be approved if it meets the requirements of paragraph (a) or (b) of this section and the individual is not already qualified for the objective for which the program of education is offered.

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 36 FR 2509, Feb. 5, 1971; 38 FR 14936, June 7, 1973; 39 FR 45236, Dec. 31, 1974; 40 FR 31762, July 29, 1975]

§ 21.4231 Educational plan; 38 U.S.C. chapter 35; child.

(a) During or subsequent to counseling the eligible person (with concurrence of the parent or guardian, if a minor, and with the assistance of the counselor, if desired), will prepare an educational plan on a prescribed form which will be signed and treated as an integral part of the application. The educational plan will show the objective and program selected, the school where the program will be pursued and the estimated cost for tuition and fees.

(b) Final approval of the educational plan will be given when it is determined that:

(1) The eligible person is not already qualified for the objective for which the plan is prepared.

(2) The educational plan is consistent with Veterans Administration regulations on providing a program of education and does not include any

courses which are precluded under 38 U.S.C. Chapter 35 (38 U.S.C. 1720).

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 38 FR 14936, June 7, 1973]

**§ 21.4232 Specialized vocational training;
38 U.S.C. chapter 35.**

(a) A program consisting of a specialized course of vocational training may be provided to an eligible person who is not in need of special restorative training and who requires such a program because of a mental or physical handicap. (38 U.S.C. 1736) The Vocational Rehabilitation Board will determine whether such a course is in the best interest of the eligible person. If the determination is in the affirmative the board will assist in developing the program and a suitable educational plan. If it is determined that such a program is not in the best interest of the eligible person the application for the program will be denied. Specialized vocational training may be authorized for an eligible child only if the child has passed his or her 14th birthday.

(b) The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) When needed, special assistance will be provided under § 21.4276.

[31 FR 6774, May 6, 1966, as amended at 39 FR 45237, Dec. 31, 1974]

§ 21.4233 Combination.

An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently. A farm cooperative program may be approved which consists of a combination of institutional agricultural courses and concurrent agricultural employment (see § 21.4264). A school may contract the actual training to another school or entity, provided the course is approved by the State approving agency having approval jurisdiction of the school or entity which actually provides the training.

(a) *Cooperative courses.* A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. Alternating periods may be a part-day in school and a part-day on job or may be such periods which alternate on a daily, weekly, monthly or on a term basis. For purposes of approval the school offering the course must submit to the State approving agency, with its application, statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(b). The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(2) That the course is set up as a cooperative course in the school catalog or other literature of the school;

(3) That the school itself arranges with the employer's establishment for providing the alternate on-job periods of training on such basis that the on-job portion of the course will be training in a real and substantial sense and will supplement the in-school portion of the course;

(4) That the school arranges directly with the employer's establishment for placing the individual student in that establishment and exercises supervision and control over the student's activities at the establishment to an extent that assures training in a true sense to the student; and

(5) That the school grants credit for the on-job portion of the course for completion of a part of the work re-

quired for granting a degree or diploma (38 U.S.C. 1682(a)(2) and 1732(b)).

(b) *Concurrent enrollment.* Where a veteran or eligible person cannot successfully schedule his or her complete program at one school, a program of concurrent enrollment may be approved. When requesting such a program the veteran or eligible person must show that his or her complete program of education or training is not available at the school in which he or she will pursue the major portion of his or her program (the primary school), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) Where the standards for measurement of the course pursued concurrently in the two schools are different, the extent of the course will be determined by converting the measurement of courses in the second school to its equivalent in value to the measurement required for full-time courses in the primary institution; e.g., school courses on a clock-hour basis converted to its equivalent in value to semester hours of credit will be 0.56 semester credits ($14 \div 25$) or 0.46 semester credits ($14 \div 30$), as applicable, for each clock hour of attendance.

(2) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree (see §§ 21.4203 and 21.4204).

(c) *Television*—(1) *Open circuit telecast.* A program may be pursued in part by open circuit telecast when:

(i) The veteran or eligible person is enrolled as a resident student in a program leading to a standard college degree.

(ii) The subjects taken by television are integral parts of his or her degree program.

(iii) A major portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom and/or laboratory sessions.

(2) *Closed circuit telecast.* Instruction offered through closed circuit telecast which requires regular class-

room attendance is to be recognized to the same extent as regular classroom and/or laboratory instruction.

(d) *Farm cooperative course.* A program of education consisting of institutional agricultural courses pursued by a veteran or other eligible person who is concurrently engaged in agricultural employment which is relevant to such institutional course may be approved if the course meets the requirements of § 21.4264.

(e) *Contract.* All or part of the program of education of a school may be furnished by another school or entity under contract. Such school or entity actually providing the training must obtain approval of the course from the State approving agency in the State having jurisdiction of that school or entity. Measurement of the course and payment of an allowance will be appropriate for the course as offered by the school or entity actually providing the training.

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13404, Sept. 23, 1967; 39 FR 45237, Dec. 31, 1974; 40 FR 31762, July 29, 1975; 41 FR 26682, June 29, 1976; 41 FR 47930, Nov. 1, 1976; 41 FR 14734, Mar. 16, 1976; 42 FR 49454, Sept. 27, 1977; 43 FR 35301, Aug. 9, 1978; 45 FR 67093, Oct. 9, 1980]

§ 21.4234 Change of program.

(a) *Definition.* A change of program consists of a change in the educational, professional or vocational objective for which the veteran or eligible person entered training and a like change in the type of courses required to attain a new objective.

(b) *Application.* A veteran or eligible person may request a change of program by any form of communication. However, if the veteran or eligible person does not furnish sufficient information to allow the Veterans Administration to process the request, the Veterans Administration will furnish the prescribed form for a change of program to him or her for completion. (38 U.S.C. 1671)

(c) *Optional change of program.* A veteran eligible to receive educational assistance under chapter 34 or a spouse or surviving spouse eligible to receive educational assistance under chapter 35 may make one optional

change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect or lack of application. (38 U.S.C. 1791(b))

(d) *Other changes of program.* (1) The following changes of program may not be made solely at the option of the veteran or eligible person. The Veterans Administration must approve them before paying educational assistance allowance:

(i) A second or subsequent change of program made by a veteran or eligible spouse or surviving spouse,

(ii) An initial change of program made by a veteran or eligible spouse or surviving spouse if the first program was interrupted or discontinued due to his or her own misconduct, neglect or lack of application, or

(iii) Any change of program made by a child.

(2) The Veterans Administration will approve a change of program listed in paragraph (d)(1) of this section if—

(i) The program of education which the veteran or eligible person proposes to pursue is suitable to his or her aptitudes, interests and abilities,

(ii) In any instance where the veteran or eligible person has interrupted, or failed to progress in his or her program due to his or her own misconduct, neglect or lack of application, there is a reasonable likelihood with respect to the program the veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress, and

(iii) In the case of an eligible child the new program meets the criteria applicable to final approval of an original application. See §§ 21.4230 and 21.4231.

(3) The Veterans Administration may approve a third or subsequent change of program if applicable conditions of paragraph (d)(2) of this section are met and the additional change or changes are necessitated by circumstances beyond the control of the veteran or eligible person. Circumstances beyond the control of the veteran or eligible person include, but are not limited to—

(i) The course being discontinued by the school when no other similar course leading to the same objective is

available within normal commuting distance.

(ii) Unexpected financial difficulties preventing completion of the last program because of the overall cost of the program needed to reach the objective, or

(iii) The veteran or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distance. (38 U.S.C. 1791)

(e) *Adjustments; transfers.* A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.

(2) A transfer from one school to another when the program at the second school leads to the same educational, professional or vocational objective, and does not involve a material loss of credit, or increase training time.

(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the veteran's or eligible person's program. For example, an eligible person enrolled for a bachelor of science degree may show a professional objective such as chemist, teacher or engineer. His or her objective for purposes of this paragraph shall be considered to be "bachelor degree" and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he or she pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.

CROSS REFERENCE: Counseling. See § 21.4100.

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 39 FR 34036, Sept. 23, 1974; 39 FR 45237, Dec. 31, 1974; 45 FR 67093, Oct. 9, 1980]

§ 21.4235 Predischarge Education Program (PREP) and Special Assistance for Educationally Disadvantaged Veterans; Chapter 34.

(a) *Enrollment.* Enrollment of a veteran may be approved in any elemen-

tary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course not otherwise prohibited, regardless of his or her previous educational experience;

(1) While he or she is on active duty and meets the eligibility requirements of § 21.1040(e)(3) and chapter 32, title 38, United States Code, if such course or courses (but not including correspondence courses) are required to receive a secondary school diploma, or if such course or courses (including individual unit subjects within a General Education Development (G.E.D.) examination program) are required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment; or

(2) After discharge or release from active duty without receipt therein of a secondary school diploma or equivalency certificate, if such course or courses are required to receive a secondary school diploma; or

(3) After discharge or release from active duty, if such course or courses are necessary to the pursuit of a program of education for which he or she would be eligible but for that lack.

(b) *Measurement.* Courses will be measured as provided in § 21.4270 et seq.

(c) *Educational assistance allowance.* Educational assistance allowance will be at the monthly rates specified in § 21.4136.

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement because of enrollment in courses under the provisions of this section. (38 U.S.C. 1690, 1691, 1693, 1695, 1696; Pub. L. 91-219, 84 Stat. 76)

(e) *Certifications.* Certifications as to the serviceman's or servicewoman's need for deficiency and/or remedial courses in basic English language skills and mathematic skills under paragraph (a)(1) of this section may be made by either the service education officer, by a Veterans Administration counseling psychologist, or by the educational institution administering the course or to which the student has made application for admission. Certifications as to the veteran's need for deficiency and/or remedial courses in

basic English language skills under paragraphs (a) (2) and (3) of this section may be made by a Veterans Administration counseling psychologist or by the educational institution administering the course or to which the student has made application for admission. Certifications as to need for other refresher, remedial and/or deficiency course requirements under paragraphs (a) (1), (2) and (3) of this section are to be made by the educational institution administering the course which the student is preparing to enter, or to which the student has made application for admission.

(f) *Basic skills.* Basic English language courses or mathematical courses will be authorized when it is found by accepted testing methods that the serviceman, servicewoman, or veteran is lacking in basic reading, writing, speaking or essential mathematics.

(g) *Deficiency course.* A deficiency course is any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a postsecondary program of education.

(h) *Remedial course.* A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(i) *Refresher course.* A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(j) *Enrollment restrictions.* After October 31, 1976, no person other than a member of the Armed Forces described in section 1631(b), title 38, United States Code, shall be permitted to enroll or reenroll in any course provided under the authority of subchapter VI, chapter 34, title 38, United States Code. See § 21.5040. (38 U.S.C. 1696(d); Pub. L. 94-502, 90 Stat. 2383)

[35 FR 9816, June 16, 1970, as amended at 36 FR 21406, Nov. 9, 1971; 38 FR 14937, June 7, 1973; 39 FR 34037, Sept. 23, 1974; 41 FR 47930, Nov. 1, 1976; 42 FR 49455, Sept. 27, 1977; 43 FR 35301, Aug. 9, 1978]

CROSS REFERENCE: High school evening courses. See § 21.4271.

§ 21.4236 Special supplemental assistance (tutorial).

(a) *Enrollment.* A veteran or eligible person pursuing a postsecondary educational program on a half-time or more basis at an educational institution who has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education may receive special supplemental monetary assistance to provide tutorial services.

(b) *Certification.* Approval will be granted upon certification by the educational institution;

(1) That individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to, the satisfactory pursuit of an approved program of education;

(2) That the tutor selected is qualified, and

(3) That the charges for such assistance do not exceed the customary charges for such tutorial assistance. Approval will not be given unless it is established that the assistance to be furnished is on an individualized basis.

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137 the cost of such tutorial assistance in an amount not to exceed \$69 per month will be authorized. (38 U.S.C. 1692(b); Pub. L. 95-202, 91 Stat. 1433)

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of \$828. (38 U.S.C. 1690, 1692, 1693; Pub. L. 95-202, 91 Stat. 1433)

[35 FR 9816, June 16, 1970, as amended at 38 FR 14937, June 7, 1973; 44 FR 62501, Oct. 31, 1979]

§ 21.4237 Special assistance for the educationally disadvantaged; chapter 35; spouse or surviving spouse.

(a) *Enrollment.* Enrollment of an eligible spouse or surviving spouse may be approved in an appropriate course

or courses at the secondary school level in a State if the spouse or surviving spouse:

(1) Has not received a secondary school diploma (or an equivalency certificate),

(2) Needs additional secondary school education, remedial, refresher or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education, and

(3) Is to pursue the course or courses in a State.

(b) *Measurement.* Remedial, deficiency or refresher courses offered at the secondary school level will be measured as provided in §§ 21.4271(c) and 21.4272(f).

(c) *Educational assistance allowance.* Educational assistance allowance will be authorized at the monthly rates specified in § 21.4137.

(d) *Entitlement charge.* No charge will be made against the period of the entitlement of the spouse or surviving spouse because of enrollment in courses under the provisions of this section (38 U.S.C. 1733).

(e) *Certifications.* Certifications as to the need of the eligible spouse for deficiency and/or remedial courses in basic English language skills and mathematic skills under paragraph (a) of this section may be made by either the Veterans Administration counselor or by the educational institution administering the course, or to which the student has made application for admission. Certification as to the need for other refresher, remedial and/or deficiency course requirements under paragraph (a) of this section are to be made by the educational institution administering the course which the student is preparing to enter, or to which the student has made application for admission.

(f) *Basic skills.* Basic English language courses or mathematic courses will be authorized when it is found by accepted testing methods that the eligible spouse is lacking in basic reading, writing, speaking or essential mathematics.

(g) *Deficiency course.* A deficiency course is any secondary level course or subject not previously completed satisfactorily which is specifically required

for pursuit of a post-secondary program of education.

(h) *Remedial course.* A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(i) *Refresher course.* A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

[38 FR 14937, June 7, 1973, as amended at 39 FR 34037, Sept. 23, 1974; 42 FR 49455, Sept. 27, 1977]

CROSS REFERENCE. High school evening courses. See § 21.4271.

COURSES

§ 21.4250 Approval of courses.

(a) *General.* A course of education, including the class schedules of a resident course (other than a flight course) not leading to a standard college degree, offered by a school must be approved by the State approving agency for the State in which the school is located, or by the State approving agency which has appropriate approval authority, or, where appropriate, by the Veterans Administration. (38 U.S.C. 1772)

(1) A course approved under chapter 36 shall be deemed approved for purposes of chapters 34 and 35.

(2) Any course which was approved under chapter 33 (as in effect before February 1, 1965), or under chapter 35 prior to March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters will be deemed to be approved for purposes of chapter 36 (38 U.S.C. 1770).

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.* Each State approving agency will furnish to the Veterans Administration a current list of schools specifying courses which it has approved, and will furnish such other information as it and the Veter-

ans Administration may determine to be necessary. See § 21.4256.

(2) *Notice of suspension of approval or disapproval.* Each State approving agency will notify the Veterans Administration of the suspension of approval or disapproval of any course previously approved and will set forth the reasons for such suspension of approval or disapproval. See § 21.4259 (38 U.S.C. 1772(a)).

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Veterans Administration.

(c) *Veterans Administration approval.* The Director, Education and Rehabilitation Service, may approve:

(1) Special restorative training in excess of 9 months, to overcome or lessen the effects of a physical or mental disability so as to enable an eligible person to pursue a program of education under chapter 35;

(2) A course of education offered by any agency of the Federal Government authorized under other laws to offer such course; applications for courses at Department of Defense Overseas Dependents Schools and schools under contract with Department of Defense must include a copy of the report from Department of Defense to the Committees on Veterans' Affairs of the Senate and House of Representatives indicating the schools are to be used under the Predischarge Education Program. Courses approved before October 24, 1972 will be considered approved until January 22, 1973 without this submission;

(3) A course of education to be pursued under 38 U.S.C. chapter 34 or 35 offered by a school located in the Canal Zone, Guam, or Samoa;

(4) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 38 U.S.C. Chapter 34 or 35 offered by an institution of higher learning not located in a State (38 U.S.C. 1676, 1723);

(5) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36 (38 U.S.C. 1772(b)), and

(6) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State. (38 U.S.C. 1772(c); Pub. L. 91-219, 84 Stat. 76)

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 37 FR 10443, May 23, 1972; 38 FR 14937, June 7, 1973; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979]

CROSS REFERENCE: State approving agencies. See § 21.4150(e).

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(1) Any course to be pursued in a public or other tax-supported educational institution including the flying clubs which are the subject of § 21.4201(c)(4);

(2) Any course which is similar in character to instruction previously offered by the school for more than 2 years;

(3) Any course which has been offered by a school for a period of more than 2 years, notwithstanding that the school has moved to another location within the same general locality, or where the school has made a complete move with substantially the same faculty, curricula, and students, without a change in ownership;

(4) Any course which is offered by a nonprofit school of college level and which is recognized for credit toward a standard college degree;

(5) Any course for the educationally disadvantaged or Predischarge Education Program offered by a proprietary nonprofit educational institution, at the principal or branch location, when the institution offering the course has

been in operation for more than 2 years; or

(6) Any course offered by an educational institution under a contract with the Department of Defense that (i) is given on, or immediately adjacent to, a military base, (ii) is available only to active duty military personnel and/or their dependents and (iii) has been approved by the State approving agency of the State in which the base is located or by the State approving agency in the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (h) of this section may waive the requirements referred to in this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government. (38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(b) *Operation for 2 years.* A course is considered to have been in operation for 2 years when it has been given continuously for 24 calendar months inclusive of reasonable vacation and holiday periods.

(1) Where courses are only offered on an ordinary school-year basis (approximately 9 months), 2 ordinary school years in the 24 calendar months will constitute a 2-year period.

(2) Where short courses of less than an ordinary school year are offered on a regular cycle, two cycles of such operation will constitute the 2-year period if each of the two cycles occurs in a separate calendar year.

(3) Where a course is started by a school with instructions provided to students in such courses, the period of continuous operation will not be con-

sidered broken during any 30-day period if at least one or more days of instruction is provided.

(4) Where a course is started by a school with instructions provided to students in such courses, any reasonable period of time in excess of 30 days, where the school has instructors and classrooms available but no students have enrolled during such period, will not break the continuity of operation of the course. In these cases, the 2-year period of operation will not be met until the period when no students were enrolled in the course is added to the initial 2-year period.

(c) *Course similar in character.* A course will be considered similar in character if it provides training for the same general objective and involves the same or related instructional processes, tools, and material as a course previously furnished by the school for a period of at least 2 years. When the State approving agency approves a new course which has not been in operation for a period of at least 2 years, as similar in character to a course which has been in operation for at least 2 years, the State will furnish the Veterans Administration with a copy of the approval and the basis for its view as to the similarity in character.

(d) *Move to new location.* A school will be considered to have moved to another location in the same general locality when the new location is within normal commuting distance of the original location, and remains essentially the same as to faculty and student body and offers the same courses.

(e) *Change of ownership or management.* (1) Where a school has been in operation for 2 years or more and changes ownership or management, and remains essentially the same as to faculty, student body, and courses offered, the courses of the school will not again be subject to the 2-year limitation. (38 U.S.C. 1789)

(2) For the purpose of this paragraph a change of ownership of a school occurs when the new owner submits written evidence to the Director of the VA field station of jurisdiction through the State approving agency that the new owner:

(i) Has acquired all, or substantially all, of the school's assets, which are directly related to the school's educational activities;

(ii) Assumes liability on the date the school is sold for all, or substantially all, of the outstanding debts incurred as a direct result of the school's educational activities under previous ownership. This shall include overpayments of educational assistance for which the school is liable or may become liable under § 21.4009;

(iii) Will make all refunds which on the date the school is sold, may be due to veterans and eligible persons under § 21.4254(c)(13); and

(iv) Agrees to honor all student contracts with veterans or eligible persons that were signed or approved by the school's authorities before the effective date of the change of ownership. (38 U.S.C. 1789)

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a) (1), (2), (3), or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) This requirement will apply to any course offered by a branch or extension of a public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3), or (4) of this section.

(2) This requirement will apply to any course offered by a branch or extension of a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting

distance of such institution and to a proprietary profit educational institution, even if the branch or extension is located within commuting distance unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3) or (4) of this section.

(3) Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(i) The school has been in operation for a period of 2 years or more;

(ii) The school has reached the limit of its enrollment capacity in its present facilities;

(iii) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(iv) The additional facilities are within normal commuting distance of the present facilities. (38 U.S.C. 1789(b); Pub. L. 95-202, 91 Stat. 1433)

(g) *Period of operation of pre-discharge education program courses.* Any course as contemplated in § 21.4235(a)(1) which is established under § 21.4260(b)(2) will be accepted as having been in operation for the 2-year period if it is similar in character to one which the institution has had in operation for a 2-year period at its parent location.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a)(6), (f)(1) or (f)(2) of this section may apply to the appropriate Veterans Administration field station Director. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. In all other instances he or she shall inform the

school requesting a waiver that the request is denied. If a school, upon being informed, would like the request to be considered further, the request will be forwarded to the Director, Education and Rehabilitation Service with the field station Director's recommendation.

(1) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel and/or their dependents, and/or civilian employees of the base, and/or persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it.

(ii) The State approving agency of the State in which the course is offered certifies that the course meets all other approval requirements.

(2) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located outside the United States. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to persons whom the base commander has permitted to attend, and

(ii) The State approving agency having jurisdiction over the school offering the course certifies that the course meets all other approval requirements.

(3) The Director of the Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a

waiver of the requirements of either paragraph (f)(1) or (f)(2) of this section. He or she may grant such a waiver when he or she finds that:

(i) No alternative comparable courses are effectively open to veterans or eligible persons within normal commuting distance of the site where the course is offered for which a waiver is requested.

(ii) The compliance history of the parent school is satisfactory. This includes such factors as enrollment certification timeliness and accuracy, false or deceptive advertising complaints, and school liability indebtedness to the Veterans Administration.

(iii) The course for which a waiver is requested is also being offered at the school's main campus.

(iv) All credits earned in the course offered at the branch or extension are acceptable on transfer to the main campus without reservation.

(v) No contracts exist between the school and any other institution or entity which provide for recruitment of students for the course by the other institution or entity, or student payment of tuition and fees to the other institution or entity rather than to the school, or which effectively prevent the school's faculty on its main campus from overseeing the course being offered at the branch or extension.

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789; Pub. L. 95-202, 91 Stat. 1433)

CROSS REFERENCE: Courses offered at branches or extensions. See § 21.4266.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 36 FR 1468, Jan. 30, 1971; 37 FR 6680, Apr. 1, 1972; 38 FR 10153, Apr. 25, 1973; 40 FR 31763, July 29, 1975; 43 FR 35301, Aug. 9, 1978; 44 FR 62501, Oct. 31, 1979; 45 FR 43170, June 26, 1980]

§ 21.4252 Courses precluded.

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b) (1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Veterans Administration determines to be avocational or recreational (38 U.S.C. 1673(a), 1723(a)).

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* Enrollment in a course of flight training to obtain a private pilot's license or equivalent level training under chapter 34, and flight training at any level under chapter 35, will not be approved except one given by an institution of higher learning for credit toward the

standard collegiate degree for which the veteran or eligible person is enrolled. See § 21.4263. (38 U.S.C. 1673(b), 1723(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* Enrollment in such courses will not be approved for eligible children under chapter 35. Nor shall any veteran or eligible spouse or surviving spouse be enrolled in a program of education exclusively by correspondence as authorized under section 1786, title 38, United States Code, and § 21.4256 or for the pursuit of a correspondence portion of a combination correspondence-residence course leading to a vocational objective as authorized under § 21.4279 if the normal period of time required to complete the correspondence course or portion of the course is less than 6 months in duration. The normal completion time will be considered to be 6 months or more if 80 percent or more of those completing the correspondence course over the past 2 years have required 6 months or more to complete all lessons. See §§ 21.4256 and 21.4279. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(f) *Courses on secondary level; chapter 35.* (1) A curriculum offered by a public or private school at the secondary school level leading to the completion of the eligible child's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as part of a course of education of an eligible child under chapter 35. An eligible spouse or surviving spouse may pursue secondary school courses only under the Special Assistance for the Educationally Disadvantaged program. See § 21.4237.

(2) Where the eligible person has ended his or her secondary school education, by completion or otherwise, after having passed the age of compulsory school attendance, he or she may pursue a specialized vocational program of education in a school at the secondary level if such program leads to a bona fide vocational objective. Such a program may be pursued if it is deemed adequate to prepare graduates to enter directly into employment in

the occupation or vocation which the eligible person expects to enter.

(3) Enrollment in a specialized vocational program will not be approved where the program, although containing essential elements of vocational instruction, includes a heavy weighting of subjects of secondary level thereby requiring for completion a total number of instructional hours approximately equal to that required for high school graduation (38 U.S.C. 1723(d)).

(g) *Vocational courses; chapters 34, 35, and 36.* Enrollment in any course with a vocational objective will not be approved unless the veteran or eligible person, or the institution offering such course, establishes that at least one-half of the persons completing such course over the preceding 2-year period, excluding the number of persons who completed such course with assistance under title 38, United States Code, while serving on active duty and the number of persons who are unavailable for employment, have been employed in the occupational category for which the course was designed to provide training. (38 U.S.C. 1673(a), 1723(a); Pub. L. 93-508, 88 Stat. 1578)

(h) *Erroneous, deceptive, misleading practices.* Enrollment will not be approved in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. The services and facilities of the Federal Trade Commission shall be utilized by the Veterans Administration, where appropriate, pursuant to an agreement to carry out investigations and to make determinations under this paragraph as provided by section 1796, title 38, United States Code. To ensure compliance with this section, any institution offering courses approved for the enrollment of veterans or eligible persons shall maintain a complete record of all advertising, sales, or enrollment materials (and copies of each) utilized by or on behalf of the institution during the preceding 12-month period. Such record shall be available for inspection by the State approving agency or the Veterans Administration. Such materials shall in-

clude but are not limited to any direct mail pieces, brochures, printed literature used by sales persons, films, video tapes, and audio tapes disseminated through broadcast media, material disseminated through print media, tear sheets, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution. (38 U.S.C. 1796; Pub. L. 94-502, 90 Stat. 2383)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eligible person, since no educational assistance allowances shall be paid for such courses. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part, by the Veterans Administration at the time the grade is assigned, an overpayment shall be created against the account of the student for such a course, unless the Veterans Administration determines there are mitigating circumstances. (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(k) *Courses with suspended approval.* When a State approving agency has suspended the approval of a course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted. If the State approving agency does not lift the suspense, but disapproves the course instead, new enrollments beginning on or after the date the suspense was effective shall not be approved. See § 21.4259. (38 U.S.C. 1772(a))

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13404, Sept. 23, 1967; 35 FR 9817, June 16, 1970; 40 FR 31763, July 29, 1975; 43 FR 35302, Aug. 9, 1978; 45 FR 31063, June 12, 1980]

§ 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(1) The course has been accredited and approved by a nationally recognized accrediting agency or associ-

ation. "Candidate for accreditation" status is not a basis for approval of a course as accredited.

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

(3) The course is conducted under 20 U.S.C. 11-28 (vocational education).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree (38 U.S.C. 1775).

(b) *Course objective.* Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Commissioner of Education as required by 38 U.S.C. 1775(a). The State approving agencies may utilize the accreditation of such accrediting agencies or associations for approval of the courses specifically accredited and approved by such agency or association.

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the fol-

lowing criteria and additional reasonable criteria established by the State approving agency:

(1) The institution has submitted to the State approving agency copies of its catalog or bulletin which is certified as true and correct in content and policy by an authorized representative and the publication contains:

(i) Institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress and a description of the probationary period, if any, allowed by the institution, and conditions of reenrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student), and

(ii) Institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester; record of withdrawal from any subject to include the last date of attendance for a resident course; and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately, and the person and the Veterans Administration so notified. The record must be cumulative in that the results of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final

result, i.e., passed, failed, incomplete or withdrawn. (38 U.S.C. 1775(b))

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 1674 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) The school maintains adequate attendance records for veterans and eligible persons enrolled in resident courses not leading to a standard college degree.

(e) *College level.* Under the provisions of paragraph (a)(1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Veterans Administration as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized regional accrediting agency listed by the Commissioner of Education or the course is accredited at the college level by a specialized accrediting agency or association recognized by the Commissioner of Education; and

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours or by recognition at completion by the granting of a standard college degree.

(f) *Courses not leading to a standard college degree.* Any course in a school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The course or the school offering such course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field for which the accrediting agency is recognized and at a level for which it is recognized; and

(3) The course leads to a high school diploma or a vocational objective.

[31 FR 6774, May 6, 1966, as amended at 38 FR 14938, June 7, 1973; 40 FR 33825, Aug. 12, 1975; 43 FR 35302, Aug. 9, 1978]

§ 21.4254 Nonaccredited courses.

(a) *General.* Nonaccredited courses are courses which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution. These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) *Application.* Any school desiring to enroll veterans or eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 1776(a)). Such application will be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official of the school and will include the following:

(1) Identifying data, such as volume number, and date of publication;

(2) Names of the school and its governing body, officials, and faculty;

(3) A calendar of the school showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) School policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) School policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(6) School policy and regulations relative to standards of progress required of the student. This policy will define the grading system of the school, the minimum grades considered satisfactory conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the school,

and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the school and furnished the student;

(7) School policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges;

(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course, or withdraws, or is discontinued therefrom;

(10) A description of the available space, facilities, and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work, or skill to be learned, and approximate time and clock hours to be spent on each subject or unit; and

(12) Policy and regulations relative to granting credit for previous education and training (38 U.S.C. 1776(b)).

(c) *Approval criteria.* The appropriate State approving agency may approve the application of such school when the school and its nonaccredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar recognized accepted standards.

(2) There is in the school adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(4) The school maintains a written record of the previous education and training of the veteran or eligible person and clearly indicates that appropriate credit has been given for previous education and training, with the training period shortened proportionately, and the veteran or eligible person and the Veterans Administration so notified.

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to absences, grading policy, and rules of operation and conduct will be furnished the veteran or eligible person upon enrollment.

(6) Upon completion of training, the veteran or eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building, and sanitation codes. The State approving agency may require such evidence of compliance as it deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:

(i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and

(ii) Has, if such an order has been issued, given due weight to that fact.

(11) The school does not exceed its enrollment limitations as established by the State approving agency.

(12) The school administrators, directors, owners, and instructors are of good reputation and character.

(13) The school has and maintains a policy for the refund of the unused portion of tuition, fees, and other charges in the event the veteran or eligible person fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion. Such policy must provide that the amount charged to the veteran or eligible person for tuition, fees, and other charges for a portion of the

course shall not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. See § 21.4255.

(14) Such additional reasonable criteria as may be deemed necessary by the State approving agency. (38 U.S.C. 1776(c))

[31 FR 6774, May 6, 1966, as amended at 33 FR 9546, June 29, 1968]

§ 21.4255 Refund policy: nonaccredited courses.

A refund policy will meet the requirements of § 21.4254(c)(13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length when the school makes provision for refund within the following limitations:

(a) *Registration fee.* An established registration fee in an amount not to exceed \$10 need not be subject to pro-rata. Where the established registration fee is more than \$10, the amount in excess of \$10 will be subject to pro-rata.

(b) *Breakage fee.* Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(c) *Consumable instructional supplies.* Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(d) *Books, supplies, and equipment.* Where the veteran or eligible person purchases his or her books, supplies, and equipment from a bookstore or other source, and the cost of such items is separate and independent from the charge made by the school for tuition and fees, he or she may retain or dispose of such items at his or her own discretion. Where the school furnishes the books, supplies,

and equipment, with the cost thereof included in the total charge payable to the school for the course, and the veteran or eligible person withdraws or is discontinued prior to the completion of the course, refund will be made in full for the amount of the charge for the unissued books, supplies, and equipment. Issued items may be disposed of at the discretion of the veteran or eligible person.

(e) *Tuition and other charges.* Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran or eligible person than the approximate pro rata basis as provided in this section, such established policy will be applicable. Otherwise, the school may charge a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the student to the total number of instructional days in the course.

(f) *Prompt refund.* In the event that the veteran, spouse, surviving spouse or child fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion of the course, the unused portion of the tuition, fees and other charges paid by the individual shall be refunded promptly. Any institution which fails to forward any refund due within 40 days after such a change in status, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this section.

[31 FR 6774, May 6, 1966, as amended at 43 FR 3909, Jan. 30, 1978]

§ 21.4256 Correspondence courses.

(a) A school desiring to enroll veterans under chapter 34 and spouses or surviving spouses under chapter 35 for correspondence courses or courses of combined correspondence-residence may have such courses approved when the courses and the school meet the requirements of §§ 21.4252, 21.4253, or 21.4254, and 21.4279 as applicable, and

when its application demonstrates that the course is satisfactory in all elements, including a certification as to the normal period of time required to complete the course and proof that the certification has been submitted to the Veterans Administration. Such a course must require not less than 6 hours of preparation per week over any 26-week period and must require 6 or more months to complete. No more than 20 percent of the students pursuing such a course should be able to complete the course in less than 6 months for the normal length to be certified as 6 months or more. The determination of this factor shall be based upon the records of the school for the two immediately preceding years. (38 U.S.C. 1780(a)(5); Pub. L. 94-502, 90 Stat. 2383)

(1) The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse or surviving spouse and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational allowance by the Veterans Administration.

(2) A copy of the agreement shall be given to the veteran, spouse or surviving spouse when it is signed.

(3) The agreement shall not be effective unless the veteran, spouse or surviving spouse after the expiration of 10 days after the agreement is signed, shall have signed and submitted to the Veterans Administration a written statement, with a signed copy to the institution, specifically affirming the agreement.

(4) Upon notification of the institution by the veteran, spouse or surviving spouse of an intention not to affirm the agreement, any fees paid by the individual shall be returned promptly in full to him or her.

(5) Upon termination of the affirmed agreement for training in an accredited course by the veteran, spouse or surviving spouse, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or \$50, whichever is lesser, may be charged him or her. When the agreement is terminated after completion of less than 25 percent of the lessons of the

course, the institution may retain the registration fee plus 25 percent of the tuition for the course. When the agreement is terminated after 25 percent but less than 50 percent of the lessons are completed, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(6) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse or surviving spouse than the pro rata basis as provided in paragraph (a)(5) of this section, such established policy will be applicable.

(7) Any institution which fails to forward any refund due to the veteran, spouse or surviving spouse within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this section.

(b) Whenever the State approving agency approves a correspondence course for training of veterans under chapter 34 and eligible spouses and surviving spouses under chapter 35, it shall immediately notify the Veterans Administration, identifying the school, the course or courses approved, and the educational or vocational objective of each approved course.

[43 FR 35303, Aug. 9, 1978]

§ 21.4257 Cooperative courses.

A cooperative course may be approved when the course meets the requirement of § 21.4233(a).

§ 21.4258 Notice of approval.

(a) The State approving agency, upon determining that a school has complied with all the requirements for approval will notify the school by letter setting forth the courses which have been approved, and will furnish to the Veterans Administration an official copy of the letter and attachments and any subsequent amendments. The letter of approval for each school will be accompanied by a copy of the catalog or bulletin of the

school, as approved by the State approving agency, and will contain the following information:

(1) Date of letter and effective date of approval of courses;

(2) Proper address and name of each school;

(3) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin published by the school;

(4) Name of each course approved;

(5) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;

(6) Signature of responsible official of State approving agency; and

(7) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency. (38 U.S.C. 1778)

(b) For institutions of higher learning, the letter of approval may identify approved courses and subjects by reference to page numbers in the school catalog or bulletin in lieu of a listing by name as required in paragraph (a)(4) of this section.

(c) For apprentice and other on-the-job training, the provisions of paragraph (a) of this section are applicable to approval of courses pursued in training establishments. The copy of the notice of approval furnished to the Veterans Administration will be accompanied by one copy of the application submitted by the training establishment.

[31 FR 8774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13405, Sept. 23, 1967]

§ 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency, after approving any course:

(1) May suspend the approval of the course for new enrollments for a period not to exceed 60 days to allow the institution to correct any deficiencies, if the evidence of record establishes that the course fails to meet any of the requirements for approval.

(2) Will immediately disapprove the course, if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(3) Upon suspension or disapproval, the State approving agency will notify the school by certified or registered letter with a return receipt secured (38 U.S.C. 1779). It is incumbent upon the State approving agency to determine the conduct of courses and to take immediate appropriate action in each case in which it is found that the conduct of a course in any manner fails to comply with the requirements for approval.

(b) Each State approving agency will immediately notify the Veterans Administration of each course which it has suspended or disapproved.

(c) The Veterans Administration will suspend approval for or disapprove courses under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.4150(c).

(d) The Veterans Administration will immediately notify the State approving agency in each case of Veterans Administration suspension or disapproval of any school under chapter 31. (38 U.S.C. 1779)

[41 FR 30640, July 26, 1976]

§ 21.4260 Courses in foreign countries.

Enrollment in a course at a school not located in a State may be approved:

(a) In accordance with § 21.4250(c) when such course is pursued at an institution of higher learning, or

(b) When such course or courses contemplated under the provisions of § 21.4235(a)(1) are:

(1) Pursued at an institution operated by the Department of Defense, or

(2) Provided by an institution under a contract with the Department of Defense. Such course or courses must accord with regulations prescribed by the Administrator of Veterans Affairs. Assurance of compliance with the terms of such contract by such institution shall be the function of the Department of Defense.

The educational assistance allowance to a veteran or eligible person pursuing a course in a foreign country will be denied or discontinued when it is found that such enrollment is not for the best interests of the veteran, eligible person, or the Government.

[38 FR 14938, June 7, 1973]

§ 21.4261 Apprentice courses.

(a) *General.* An apprentice course is any training on-the-job course which has been established as an apprentice course by a training establishment as defined in § 21.4200(c) and which has been approved as an apprentice course by the State approving agency.

(b) *Application.* Any training establishment desiring to furnish a course of apprentice training will submit a written application to the appropriate State approving agency setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required; and

(5) Any additional information required by the State approving agency.

(c) *Approval criteria.* The appropriate State approving agency may approve a course of apprentice training when the training establishment and its apprentice courses are found upon investigation to have met the following criteria:

(1) The standards of apprenticeship published by the Secretary of Labor pursuant to 29 U.S.C. 50a;

(2) A signed copy of the training agreement for each veteran or eligible person, making reference to the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Veterans Administration and the State approving agency by the employer; and

(3) The course meets such other reasonable criteria as may be established by the State approving agency (38 U.S.C. 1787).

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 38 FR 14938, June 7, 1973]

§ 21.4262 Other training on-the-job courses.

(a) *General.* An "other training on-the-job" course is any training on the job which does not qualify as an apprentice course, as defined in § 21.4261, but which otherwise meets the requirements of paragraph (c) of this section.

(b) *Application.* Any training establishment desiring to furnish a course of other training on-the-job will submit to the appropriate State approving agency a written application setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required;

(5) The entrance wage or salary paid by the training establishment to employees already trained in the kind of work for which the veteran or eligible person is to be trained;

(6) A certification that the wages to be paid the veteran or eligible person upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 percent of the wages paid for the job for which he or she is to be trained, and will be increased in regular periodic increments until, not later than the last full month of the scheduled training period they will be at least 85 percent of the wages paid for the job for which the veteran or eligible person is being trained;

(7) A certification that there is reasonable certainty that the job for which the veteran or eligible person is to be trained will be available to him or her at the end of the training period; and

(8) Any additional information required by the State approving agency.

(c) *Approval criteria.* The appropriate State approving agency may approve the application submitted under paragraph (b) of this section, when the training establishment and its courses are found upon investigation to have met the criteria outlined in this paragraph. Approval will not be granted for training in occupations which require a relatively short period of experience for a trainee to obtain and hold employment at the market wage in the occupation. This includes occupations such as automobile service station attendant or manager, soda fountain attendant, food service worker, salesman, window washer, building custodian or other unskilled or common labor positions as well as clerical positions for which on-the-job training is not the normal method of procuring qualified personnel.

(1) The job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on-the-job and not on such factors as length of service and normal turnover;

(2) The training content of the course is adequate to qualify the veteran or eligible person for appointment to the job for which he or she is to be trained;

(3) The job customarily requires a period of training of not less than 6 months and not more than 2 years of full-time training;

(4) The length of the training period is not longer than that customarily required by the training establishments in the community to provide the veteran or eligible person with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the veteran or eligible person will need to learn in order to become competent on the job for which he or she is being trained;

(5) Provision is made for related instruction for the individual veteran or eligible person who may need it;

(6) There is in the training establishment adequate space, equipment, instructional material, and instructor

personnel to provide satisfactory training on-the-job;

(7) Adequate records are kept to show the progress made by each veteran or eligible person toward his or her job objective;

(8) The veteran or eligible person is not already qualified by training and experience for the job;

(9) The requirements of paragraphs (b) (6) and (7) of this section are met;

(10) A signed copy of the training agreement for each veteran or eligible person, including the training program and wage schedule as by the State approving agency, is provided to the veteran or eligible person and the Veterans Administration and the State approving agency by the employer; and

(11) The course meets such other reasonable criteria as may be established by the State approving agency. (38 U.S.C. 1777, Pub. L. 90-77)

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 35 FR 9817, June 16, 1970; 38 FR 14939, June 7, 1973; 45 FR 51778, Aug. 5, 1980]

§ 21.4263 Flight training—38 U.S.C. chapter 34, chapter 32.

(a) *Eligibility.* Veterans and service persons who are basically eligible to receive educational assistance allowances under the provisions of either chapter 34 or chapter 32, title 38, U.S.C., may receive educational assistance for flight training provided that the individual also:

(1) Possesses a valid private pilot's certificate, except for flight training under paragraph (b)(3) of this section, but if the individual possesses a valid higher license, such as commercial pilot's license, he or she will be deemed to meet this requirement, and

(2) Meets the medical requirements of a commercial pilot's license, except the individual training in a course specified under paragraph (b)(3) of this section. A student pursuing an ATP (Airline Transport Pilot) course must have a first-class medical certificate. Students training in a course specified under paragraph (b)(3) of this section shall possess the medical certificate required by the educational institution granting the degree. In all other courses at least a second class medical certificate is required. The

certificate shall be approved by the FAA (Federal Aviation Administration) and a copy shall be maintained by the school. Any benefits paid during a period after a medical certificate expires will be considered an overpayment subject to recovery. (38 U.S.C. 1677 (a))

(b) *Objective—general.* Pursuit of flight training may be approved if the training is:

(1) Generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation,

(2) Generally recognized as ancillary to the pursuit of a vocational endeavor other than aviation, as provided in paragraph (c) of this section, or

(3) Given by an educational institution of higher learning for credit toward a standard college degree which is being pursued by the individual. (38 U.S.C. 1677 (a))

(c) *Ancillary flight objective.* A student may be authorized to pursue flight training when such training is generally recognized as ancillary to the pursuit of a vocation other than aviation.

(1) He or she must possess a valid private pilot's license and meet medical requirements necessary for a commercial pilot's course.

(2) The training may consist of any advanced flight course, approved by the State approving agency, that will aid in the practice of the chosen profession or vocation. A determination of the sufficiency of the purpose which the student sets forth as the reason for seeking to pursue ancillary flight training is a question of fact to be decided on an individual basis. In most cases, the student's own statement will be the only evidence to be considered: for example, a physician, lawyer, rancher, or salesperson may need to fly a private plane in connection with the conduct of the profession or business and may need an instrument rating so as not to be limited by visual flight conditions, or a multi-engine rating in order to fly a company-owned aircraft (38 U.S.C. 1677(a))

(d) *Optional ratings.* Educational assistance may be paid for glider, free balloon or aerobatic flight training leading to a vocational objective. If a

veteran or inservice student requests a commercial pilot's program in gliders or free balloons in order to add one of those ratings to an existing commercial pilot's certificate or wishes to pursue an approved special curriculum in aerobatics, he or she must establish that the purpose in taking the course is vocational rather than recreational or avocational. Evidence submitted by the student may include, but is not limited to, statements from the flight school or from a prospective employer of the student.

(1) If the student already holds a commercial pilot's certificate for glider and requests a flight instructor course for glider, the program may be approved, since it may be presumed that the student's purpose in taking the course is vocational.

(2) If the student applied for training in a commercial pilot's (free balloon) course and shows an objective of flight instructor (free balloon), the student will not be required to furnish justification that the course is vocational since the holder of a commercial pilot's (free balloon) certificate has authority to give instruction in free balloon. (38 U.S.C. 1677(a))

(e) *Combined flight courses.* (1) Under Part 141, Title 14, CFR, the FAA (Federal Aviation Administration) regulations, revised, effective November 1, 1974, students may receive both a commercial pilot's certificate and an instrument rating upon successful completion of the commercial pilot's course. Appendix D, Part 141, Title 14, CFR includes the ground and flight instruction for the private pilot's course (Appendix A) and ground and the flight instruction for the instrument course (Appendix C).

(2) If the school elects to include all the training specified in the instrument course (Appendix C) in its commercial pilot's course, and so states in the training course outlined, the student may then be issued a graduation certificate for the instrument rating course, and, after meeting the experience requirements of § 61.65(e), Title 14, CFR (200 hours), apply for an instrument rating. The student may elect to take both the commercial flight test and instrument flight test on the same day and, after successful

completion of both tests, be issued an unlimited commercial pilot's certificate.

(3) If the school does not include all of the instrument training in the commercial pilot's course, the student, upon completion of the FAA practical tests, will receive a commercial pilot's certificate with cross-country and night-flight limitations. The separate instrument course of revised Appendix C, Part 141, Title 14, CFR, may still be approved for veterans and inservice students who completed the commercial pilot's course under old Part 141, Title 14, CFR which was effective prior to November 1, 1974, who received a limited commercial pilot's certificate under revised Part 141, Title 14, CFR, or who are enrolling in the instrument course under the ancillary course provisions. (38 U.S.C. 1677)

(f) *Application.* An individual applying for a course of training consisting exclusively of flight training must include on the application all courses generally accepted as necessary to reach the objective of the student. Although more than one course may be included in a program, the courses may be taken sequentially only. The applicant must complete a commercial pilot's course before enrolling in any other flight course, except where advanced courses are approved as ancillary to the pursuit of a vocation other than aviation. (38 U.S.C. 1671)

(g) *Prior training.* (1) A flight school must grant appropriate credit for all previous training and shorten the veteran's flight course proportionately for Veterans Administration purposes even when an FAA regulation indicates that it does not have to do so. The flight school to which the veteran transfers will determine the amount of credit to be granted.

(2) Although the law does not define "appropriate credit", a pattern of not granting adequate credit is a violation of 38 U.S.C. 1775(b) or 1776(c)(4). If any school consistently abuses its discretion in this respect, the Veterans Administration will refer the matter to the appropriate State approving agency.

(3) An eligible veteran or inservice student holding a commercial pilot's certificate (rotorcraft) may pursue

training to qualify for a general commercial pilot's certificate, including fixed-wing aircraft, by either enrolling in a regular commercial pilot's course (airplane), or in a special add-on course to qualify for an airplane rating. If he or she enrolls in a regular commercial pilot's course (airplane), the school must grant appropriate credit and shorten the course accordingly. Although credit is granted, this method usually requires more hours and is, therefore, more expensive than enrolling in a special add-on-course for the rating. In a like manner, a person with a fixed-wing rating may pursue training to qualify for a rotorcraft rating. If a school offers an approved add-on course for commercial pilots in which an eligible veteran may enroll to reach the objective, he or she will not be permitted to enroll at the school in the regular commercial pilot's course unless the regular course will be less expensive after credit is allowed for prior training.

(4) A former military pilot with the equivalent of a commercial pilot's certificate and instrument rating may obtain an FAA commercial pilot's certificate and instrument rating without flight examination within 12 months after release from active duty flying status. If he or she does not apply within the 12-month period, he or she may need refresher training before taking the flight examination. No Veterans Administration benefits may be paid for any such refresher training taken within the 12 months immediately following discharge, since the person qualifies for the commercial pilot's certificate and instrument rating without a flight examination. However, such a person may be paid for up to 6 months' refresher training if the refresher training takes place more than 12 months after discharge.

(i) Flight instructor and ATP ratings are not given by the FAA, on the basis of military experience only, without flight examination. Therefore, former military pilots may be enrolled in approved flight instructor and ATP training courses, for such enrollment is not considered refresher training. Flight schools must grant appropriate credit to former military pilots.

(ii) A veteran who held an FAA certificate before or during service (such certificate having been canceled or surrendered) may receive educational assistance for refresher training to again qualify for the same grade certificate. Such refresher training must meet the requirement of updating the veteran's knowledge and skill in order to cope with technological advances while he or she was in service, as required by § 21.4230(c)(2). The veteran may receive either the equivalent of 6 months educational assistance or the equivalent of the number of months of educational assistance necessary for the veteran to complete the course which will qualify him or her for the same grade certificate, whichever is less. (38 U.S.C. 1671, 1682(d))

(h) *Requirements for approval.* For the purpose of this section a flight school is a school or entity to which the FAA has issued either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under Part 141, Title 14, CFR, as revised. Thus, a military aero club, air carrier or institution of higher learning with the proper certificate is a flight school for the purpose of this section.

(1) The proper State approving agency for approving a flight course shall be determined by § 21.4250. An aero club, established, formed and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal Government. Consequently, approval of flight courses offered by such aero clubs shall be under the authority of the Administrator. See § 21.4150(f). (38 U.S.C. 1771, 1772)

(2) A course of flight training leading to a standard college degree may be approved regardless of whether the institution of higher learning offering the course is a flight school. Such a course may include private pilot training, but may not be approved unless the requirements of § 21.4253 or 21.4254, as appropriate, are met. Except for courses which include private pilot training an institution of higher learning which is also a flight school may also seek approval under

paragraph (h)(3) of this section. (38 U.S.C. 1775, 1776)

(3) Except as provided in paragraph (h)(2) of this section no private pilot or test course offered pursuant to Appendixes A and B, Part 141, Title 14, CFR, as revised, may be approved. Except for flight courses offered by institutions of higher learning which are approved under paragraph (h)(2) of this section, other flight courses of a flight school may be approved by the appropriate State approving agency when the school has submitted a written application and the State approving agency determines that all of the following requirements are met by the school and the course(s):

(i) The provisions of § 21.4253(a) or 21.4254(c) are met. (38 U.S.C. 1775, 1776)

(ii) The courses are offered under Part 63 or Part 141, Title 14, CFR, as revised. (38 U.S.C. 1677)

(iii) The course is approved by the FAA. (38 U.S.C. 1677)

(iv) The flight school courses meet all the requirements of § 21.4251.

(A) Notwithstanding the fact that the FAA will permit flight schools to conduct training at a base other than the main base of operations if the requirements of FAA regulation, § 141.91, Title 14, CFR, revised, are met, the requirements of § 21.4251 must be applied to a course offered at a satellite base.

(B) A private pilot's course is not similar in character to any advanced flight course within the meaning of the exception to the 2-year operation requirement of 38 U.S.C. 1789(b)(2). Any advanced flight course may be considered to be similar in character to any other advanced flight course.

(C) A period during which training has been offered pursuant to part 61, Title 14, CFR, will be considered in determining whether the course meets the requirements of § 21.4251. (38 U.S.C. 1789)

(v) The school has, and enforces, standards of conduct and progress for students. The standards are to be stated in writing as part of the application for approval. (38 U.S.C. 1674)

(vi) The school has an adequate system of records. Records to be kept

should consist of at least the following:

(A) A copy of the private pilot's license of each eligible veteran.

(B) Evidence that each eligible veteran has completed any prior training which may be a prerequisite for the course.

(C) A copy of the medical certificate required by paragraph (a)(2) of this section for the course being pursued by each eligible veteran as well as copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction.

(D) Each eligible veteran's daily flight log or copy thereof.

(E) Each eligible veteran's permanent ground school record.

(F) A progress log for each eligible veteran.

(G) An invoice of flight charges for individual flights.

(H) Daily flight sheets identifying records upon which the 85-15 percent ratio may be computed.

(I) A continuous hour meter record for each aircraft.

(J) Invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft and aircraft identification number.

(K) An accounts receivable ledger.

(L) Individual instructor records.

(M) Engine log books.

(N) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under Part 61, Part 63, or Part 141, Title 14, CFR, as revised.

(O) Records of tuition and accounts which are evidence of tuition charged and received from all students.

(P) All other records required by Part 141, Title 14, CFR, as revised. (38 U.S.C. 1790 (c))

(vii) If a flight school offers more than one course leading to the same objective, the course should be appropriately identified in the school's bulletin and in all school records. (38 U.S.C. 1772)

(viii) All flight instruction, preflight briefings and postflight critiques and ground school training in the course are given by the flight school operator, by persons he or she employs, or

under suitable arrangements between the school and another school or entity such as an independent contractor or a local community college. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality. See § 21.4233(e). (38 U.S.C. 1677)

(ix) All ground school training connected with the course is in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction between the students and the instructor. A mere statement by the school that an instructor is available for questions does not satisfy this requirement. The flight school operator may not leave the obtaining of such instruction to the individual student. (38 U.S.C. 1677)

(x) The requirements of § 21.4233(e) must be met for all contracted flight instruction and ground school training.

(A) The responsibility for providing the instruction lies with the flight school which seeks approval for the flight course. The degree of affiliation between the flight school and the individual group, or other school which actually does the instructing, should be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program. All reports of attendance and certifications of charges must be made by this single entity.

(B) The contracted portion of the flight course must meet all the requirements of § 21.4201 independently for each subcontractor. (38 U.S.C. 1772)

(i) *Hourly limitations.* A flight course approved pursuant to paragraph (h)(3) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an indented vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraphs (i) (1) through (3) of this section. An eligible veteran may receive training for up to 10 percent more hours than are approved as part of a course whenever

this is permitted by § 21.4277. Flight instruction may never be substituted for ground training. (38 U.S.C. 1652(b))

(1) *Flight instruction.* The maximum number of hours of flight instruction which may be approved for a flight course shall not exceed the number of hours in the course outline approved by the FAA plus, for courses which require the student to lease an aircraft for the final flight test after the approved course has been successfully completed, a maximum of 2 hours payable at the solo rate for the final flight test for each certificate or rating for which the flight course provides training. (38 U.S.C. 1652(b))

(2) *Ground school.* The ground training portion of a flight course may include two forms of ground training instruction: ground school and preflight briefings and postflight critiques. The minimum hours for ground training, as specified in Appendices C through H, Part 141, Title 14, CFR, as revised, refer only to ground school and not to preflight briefings and postflight critiques. If the ground school training consists of units using kits containing audio-visual equipment, quizzes and examinations, the maximum number of units approved shall not exceed the number on the course outline approved by the FAA. For all other ground school training, the number of hours of training shall not exceed the number of hours on the course outline approved by the FAA. (38 U.S.C. 1652(b))

(3) *Preflight briefings and postflight critiques.* Hours spent in preflight briefings and postflight critiques need not be approved by the FAA.

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques which may be approved shall not exceed the number of hours on the outline.

(ii) If these hours are not on the FAA approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the course. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not,

when added together, exceed 25 percent of the approved hours of flight instruction. (38 U.S.C. 1652(b))

(j) *Charges.* Charges for tuition and fees shall be approved by the appropriate State approving agency for each flight course. (38 U.S.C. 1772)

(1) The approved charges for tuition and fees shall be based upon the charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. Charges for books, supplies and lodging may not be reimbursed. (38 U.S.C. 1677(b))

(2) For the ground school portion of ground training, the State approving agency should approve group charges or unit prices if audio-visual equipment is used. For the preflight briefings and postflight critiques, the State approving agency should approve individual instructor rates for individual training flights. An average charge per hour based upon total hours and cost of all training given on the ground may not be approved. (38 U.S.C. 1677(b))

(3) When solo hours are included for the leasing of an aircraft for the final flight test, the solo charge should be noted in the approval. (38 U.S.C. 1677(b))

(4) A veteran or group (all or part of which are veterans) owning an airplane may lease it to an approved flight school and have exclusive use of the aircraft for flight training. The aircraft should meet the requirements prescribed for all airplanes to be used in the course and should be shown in the approval by the State approving agency. The leasing arrangement should not result in charges for flight instruction for those owning the plane greater than charges made to others not leasing an aircraft to the school. (38 U.S.C. 1677(b))

(5) If membership in a flight club entitles a veteran to flight training at less than the standard rate, his or her educational allowance will be based on the reduced rate. No payments will be made for the cost of joining the flight club, since it is not a charge for the flight course. (38 U.S.C. 1677(b))

(k) *Substitute aircraft.* Except for minor substitutions a veteran enrolled in a flight course may train only in the

aircraft approved for that course. If a particular aircraft is not available for some compelling reason, the veteran may be permitted to train in an aircraft different from that approved for the particular course, provided the aircraft substituted will adequately meet the training requirements for this particular phase of the course. Substitutions should be explained on the monthly certifications of flight training. If this shows that the charge for the substituted aircraft is different from the charge approved for the regular aircraft, the reimbursement will be based on the lesser charge. When substitution becomes the practice rather than the exception, payments will be suspended by the Veterans Administration, and the veterans and the school notified. The matter will be referred by the Veterans Administration to the State approving agency for appropriate action. (38 U.S.C. 1677, 1773(a))

(l) *Enrollment limitations.* The 85-15 percent ratio requirement set forth in § 21.4201 must be met by flight courses before new enrollments may be approved. (38 U.S.C. 1673(d))

[45 FR 51778, Aug. 5, 1980]

§ 21.4264 Farm cooperative courses.

(a) *Description of a farm cooperative course.* A farm cooperative course is an institutional agricultural course. It provides training on a reduced basis to those engaged in farming, compared to other types of training. Part-time benefits are provided for students whose farming operation will not permit them to attend class at least 10 hours per week. (38 U.S.C. 1682; 1732)

(b) *Farm cooperative students must be farmers.* In order to receive educational assistance allowance a veteran or eligible person must be engaged concurrently in agricultural employment for an average of at least 40 hours per week. This agricultural employment must be relevant to the farm cooperative course. (38 U.S.C. 1682; 1732)

(c) *Acceptable class schedules.* (1) The institutional portion of a farm cooperative course—

(i) May be on a term, quarter or semester basis, or

(ii) May consist of courses which—

(A) Are offered during at least 44 weeks of the year, and

(B) Require a minimum of 5 clock hours per week.

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(b) for measurement of farm cooperative courses. (38 U.S.C. 1682, 1732)

(d) *Application.* (1) Any school desiring to enroll veterans, spouses or children in farm cooperative courses—

(i) Will submit to the appropriate State approving agency a written application for approval in accordance with § 21.4253 or § 21.4254 as appropriate; and

(ii) Must submit statements of fact showing at least the following:

(A) That the course is set up in the school catalog or other literature of the school;

(B) That the agricultural course is offered concurrently with agricultural employment; and

(C) That the school itself verifies on a continuing basis that students are engaged for an average of at least 40 hours per week in suitable agricultural employment which is relevant to the institutional agricultural course offered by the school and is in an area consistent with their institutional training program.

(2) For the purposes of this paragraph suitable agricultural employment must include employment on a farm or other agricultural establishment where the basic activity is either—

(i) The cultivation of the ground such as the raising and harvesting of crops including fruits, vegetables and pastures, or

(ii) The feeding, breeding and managing of livestock, including poultry and other specialized farming.

(3) The Veterans Administration does not consider employment in training establishments which are engaged primarily in the processing, distribution or sale of agricultural products or combinations thereof, such as dairy processing plants, grain eleva-

tors, packing plants, hatcheries, stockyards or florists shops to be suitable agricultural employment. (38 U.S.C. 1682, 1732)

(e) *Approval criteria.* The appropriate State approving agency may approve the school's application when the agency finds upon investigation that the school and its courses have met the following conditions:

(1) The criteria specified in § 21.4253 or § 21.4254, as appropriate; and

(2) The requirements of paragraph (d) of this section. (38 U.S.C. 1682, 1732)

[46 FR 16101, Mar. 11, 1981]

§ 21.4265 Practical training approved as institutional training or on-job training.

(a) *Medical-dental internships and residencies.* Medical, osteopathic, and dental internships and residencies will be recognized as institutional courses when accredited and approved by an appropriate accrediting agency as leading to certification for a recognized professional objective. The appropriate accrediting agencies are the Council on Medical Education of the American Medical Association, the American Osteopathic Association and the Council on Dental Education of the American Dental Association. Residency programs must lead to certification by an appropriate Specialty or Subspecialty Board of the American Medical Association, the American Osteopathic Association, or the American Dental Association. Residency programs will not be approved to include a period of practice following completion of the education requirements even though the practice is required by the accrediting agency. No other medical, osteopathic, or dental internship or residency will be recognized as institutional training.

(b) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be assessed as institutional training when they are provided in autonomous schools of nursing, hospital schools of nursing, or schools of nursing established in other schools or departments of colleges and universities, if they are accredited by a nationally recognized

accrediting agency or if they meet the requirements of the licensing body of the State in which the school is located. The hospital or fieldwork phase of a nursing course, including a course leading to a degree in nursing, will be assessed as an institutional course when the hospital or fieldwork phase is an integral part of the course, the completion thereof is a prerequisite to the successful completion of the course, the student remains enrolled in the school during the period, and the training is under the direction and supervision of the school.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be assessed as institutional training including both the academic subjects and the clinical training if the clinical training is offered by an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. Also they must be accredited by a nationally recognized accrediting agency or meet the requirements of the licensing body of the State in which the school is located.

(3) Enrollment in an institutional course for the objective of nurse's aid or in a nonaccredited nursing course which does not meet the licensing requirements in the State where the course is offered will not be authorized.

(c) *Medical and dental specialty courses.* (1) Required clinical training included in a school course given in an affiliated hospital, clinic, laboratory, or medical center as a part of a medical or dental specialty course whether accredited or nonaccredited offered by a school such as X-ray technician, medical technician, medical records administrator, physical therapist or dental technician shall be assessed as institutional training provided:

(i) The student remains enrolled in the course during the clinical period;

(ii) The clinical training is;

(a) An integral part of the course;

(b) A prerequisite to the successful completion of the course; and

(c) Under the direction and supervision of the school; and

(iii) The course includes substantial technical or professional training and does not consist of training preliminarily directed to clerical, administrative, secretarial, or receptionist duties.

(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories, or medical centers which are accredited as institutional courses by a nationally recognized accrediting agency will be assessed as institutional training.

(3) Clinical training included in a school course given in a physician's office or a dentist's office, also called externship, will be recognized as part of the institutional training if the course is accredited by a nationally recognized accrediting agency and meets the other requirements of paragraph (c)(1) of this section. If the course is not so accredited such practical or on-the-job training or experience in a physician's office may not be included unless the program is approved as a cooperative course.

(4) Nonaccredited courses offered in hospitals, clinics, laboratories, or medical centers will be considered on-the-job training when the courses meet the requirements of § 21.4262.

(d) *Medical and dental assistants courses for the Veterans Administration.* A course prescribed by the Administrator for full-time physicians' assistants or for full-time expanded-function auxiliaries (formerly referred to as dentists' assistants) may be approved as institutional training, if the course is conducted at Veterans Administration facilities or in facilities operated by hospitals, medical schools, or medical installations pursuant to a contract with the Veterans Administration. (38 U.S.C. 4114(e))

(e) *Professional training courses.* (1) Any non-medically related professional internship program, such as a clinical pastoral course, will be recognized as an institutional course when it is accredited as an institutional course by a nationally recognized accrediting agency, and

(2) The approved facility for such a course must be the institution or other facility where the training is given.

(f) *Other practical training courses.* (1) Other off-campus job experience included in a school course, variously

described by schools as internship, residency, practicum, externship, et cetera, may be included as a part of a cooperative program when the course meets the requirements of § 21.4233(a).

(2) However, such off-campus courses may be considered as resident institutional training only if all of the following conditions are met. The course is:

(i) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting associations;

(ii) A part of the approved curriculum of the school;

(iii) Directly supervised by the school;

(iv) Measured in the same unit as other courses;

(v) Required for graduation; and

(vi) Has a planned program of activities described in the school's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least:

(a) A unit subject description;

(b) A provision for an assigned instructor;

(c) A statement that the planned program of activities is controlled by the school, not by the officials of the job establishment;

(d) A requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student;

(e) A statement that appropriate assignments are required for completion of the course;

(f) A grading system similar to the system used for other resident subjects offered by the school; and

(g) A schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the school for its other resident courses.

(g) *Nonaccredited courses.* Any non-accredited internship program not given in a school will be recognized as other on-the-job training when it meets the requirements of § 21.4262 and when the program is required for

licensure by the State in which it is offered. (See § 21.4275 for measurement.)

[41 FR 26633, June 29, 1976, as amended at 43 FR 25429, June 13, 1978]

§ 21.4266 Courses offered at subsidiary branches or extensions.

(a) *General.* A State approving agency in approving a course offered at a subsidiary branch or extension of an educational institution may either approve the course separately from the course approved for the educational institution's parent facility (either its main campus or its principal teaching location in a State), or it may combine the approval for courses offered at the branch or extension with that for the courses offered at the educational institution's parent facility. The choice made by the State approving agency shall be governed by the provisions of this section.

(b) *Combined approval.* If the approval for the courses offered at a branch or extension is combined with the approval for the courses offered at the educational institution's parent facility, the branch or extension does not need to have its own administrative capability. In these cases the State approving agency will list the branches or extensions and the courses approved at each on the notice of approval sent to the educational institution pursuant to § 21.4258. The approval of courses offered at a branch or extension may be combined with the approval of courses offered at a parent facility only when the branch or extension is located in the same State as the parent facility and one of the following conditions exist:

(1) The course offering at the branch or extension consists of a small number of unit subjects which do not comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis;

(2) The course offering at the branch or extension is being given on a temporary basis (the educational institution is contemplating no more than a few cycles of training);

(3) The facilities at the branch or extension contain insufficient space

for an administrative capability to be developed.

(c) *Separate approval.* If the course offered at a subsidiary branch or extension cannot qualify under paragraph (b) of this section for a combined approval with the courses offered at the educational institution's parent facility, the State approving agency can only approve the courses separately. Such a course may not be approved if the branch or extension neither has administrative capability nor can qualify for an exception to having administrative capability.

(1) A branch or extension is considered to have an administrative capability when:

(i) The branch or extension maintains all records and accounts required by § 21.4209;

(ii) The branch or extension designates a named certifying official;

(iii) The branch or extension is able to furnish to the Veterans Administration without resort to the parent school all reports and certifications required by §§ 21.4203, 21.4204 and 21.4205;

(iv) The branch or extension maintains a local mailing address.

(2) Notwithstanding any other provisions of this paragraph courses may be approved separately at a branch or extension without administrative capability if the parent facility within the same State:

(i) Maintains a centralized record-keeping system;

(ii) Can identify the records of students at each branch;

(iii) Specifies the branch location when certifying enrollments. (38 U.S.C. 1772, 1789(c))

CROSS REFERENCE: Period of operation of course. See § 21.4251.

[43 FR 35303, Aug. 9, 1978, as amended at 44 FR 62503, Oct. 31, 1979]

ASSESSMENT AND PURSUIT OF COURSES

§ 21.4270 Measurement of courses.

(a) Trade, technical, high school and high school preparatory courses shall be measured as stated in this table. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES

Kind of school	Kind of course	Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time	Less than $\frac{1}{2}$ time more than $\frac{1}{4}$ time	$\frac{1}{4}$ time or less
Trade or technical-nonaccredited (includes college courses not leading to a standing and degree) ¹ .	Shop practice an integral part of course.	30 clock hours attendance with not more than 2 $\frac{1}{2}$ hours rest period allowance and not more than 6 hours of supervised study.	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3 $\frac{1}{2}$ hours of supervised study.	15 through 21 clock hours attendance with not more than 1 $\frac{1}{2}$ hours rest period allowance and not more than 2 $\frac{1}{2}$ hours of supervised study.	8 through 14 clock hours attendance with not more than $\frac{1}{2}$ hour rest period allowance and not more than $\frac{1}{2}$ hour of supervised study.	1 through 7 clock hours attendance.
	Theory and class instruction predominates ² .	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3 $\frac{1}{2}$ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2 $\frac{1}{2}$ hours of supervised study.	7 through 11 clock hours net instruction and not more than 1 $\frac{1}{2}$ hours of supervised study.	1 through 6 clock hours net instruction.

COURSES—Continued

Kind of school	Kind of course	Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time	Less than $\frac{1}{2}$ time more than $\frac{1}{4}$ time	$\frac{1}{4}$ time or less
Trade or technical-accredited (includes college courses not leading to a standard degree) ¹ .	Shop practice an integral part of course ¹ .	22 clock hours attendance with not more than 2 $\frac{1}{4}$ hours rest period allowance.	16 through 21 clock hours attendance with not more than 2 hours rest period allowance.	11 through 15 clock hours attendance with not more than 1 $\frac{1}{4}$ hours rest period allowance.	6 through 10 clock hours attendance with not more than $\frac{1}{4}$ hour rest period allowance.	1 through 5 clock hours attendance.
	Theory and class instruction predominates ^{2, 3} .	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.
High school-nonaccredited.	High school diploma or equivalent ^{2, 3} .	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent.	18 through 24 clock hours net instruction and not more than 3 $\frac{1}{4}$ hours of supervised study or 3 units per year or equivalent.	12 through 17 clock hours net instruction and not more than 2 $\frac{1}{2}$ hours of supervised study or 2 units per year or equivalent.	7 through 11 clock hours net instruction and not more than 1 $\frac{1}{4}$ hours of supervised study or 1 unit per year or equivalent.	1 through 6 clock hours net instruction.
High school accredited.	High school diploma or equivalent ^{2, 3} .	18 clock hours net instruction or 4 units per year or equivalent.	13 through 17 clock hours net instruction or 3 units per year or equivalent.	9 through 12 clock hours net instruction or 2 units per year or equivalent.	5 through 8 clock hours net instruction or 1 unit per year or equivalent.	1 through 4 clock hours net instruction.
Elementary school-nonaccredited ¹ .	High school-preparatory ² .	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3 $\frac{1}{4}$ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2 $\frac{1}{2}$ hours of supervised study.	7 through 11 clock hours net instruction and not more than $\frac{1}{4}$ hour of supervised study.	1 through 6 clock hours net instruction.
Do ¹	do ²	18 clock hours net instructions..	13 through 17 clock hours net instruction..	9 through 12 clock hours net instruction..	5 through 8 clock hours net instruction..	1 through 4 clock hours net instruction.

¹An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section, provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1 $\frac{1}{4}$ hours or $\frac{1}{2}$ time courses of 16–21 clock hours; 1 hour for $\frac{1}{2}$ time courses of 11–15 clock hours; or $\frac{1}{4}$ hour for less than $\frac{1}{2}$ time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

²In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

³Supervised study must be excluded.

⁴Diploma course or equivalent based on completion of 18 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of a 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

⁵Diploma course or equivalent based on completion of 18 instruction units. High school diploma courses or equivalent are available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

(38 U.S.C. 1788; Pub. L. 95-202, 91 Stat. 1433)

(b) Collegiate, professional and on-the-job training courses shall be measured as stated in this table. Clock

hours and class sessions mentioned in this table mean clock hours and class sessions per week.

COURSES

Kind of school	Kind of course	Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time	Less than $\frac{1}{2}$ more than $\frac{1}{4}$ time	$\frac{1}{4}$ time or less
Collegiate undergraduate.	Standard collegiate courses including cooperative and external degree programs ¹ .	14 semester hours or equivalent ² .	10 through 13 semester hours or equivalent.	7 through 9 semester hours or equivalent.	4 through 6 semester hours or equivalent.	1 through 3 semester hours or equivalent.
Collegiate graduate.	Standard collegiate graduate courses including law and external degree programs ¹ .	14 semester hours or equivalent or as certified by a responsible official of the school ² .	10 through 13 semester hours or as certified by a responsible official of the school.	7 through 9 semester hours as certified by a responsible official of the school.	4 through 6 semester hours or as certified by a responsible official of the school.	1 through 3 semester hours or as certified by a responsible official of the school.
Professional nonaccredited.	Law only ³	12 class sessions per week.	9 through 11 class sessions per week.	6 through 8 class sessions per week.	4 through 5 class sessions per week.	1 through 3 class sessions per week.
Professional accredited and equivalent.	Internships and residencies: Medical, Dental, Osteopathic. Nursing, X-ray, medical technology, medical records librarian, physical therapy ⁴ .	As established by accrediting association. 18 clock hours or 14 semester hours, as appropriate.	As established by accrediting association or entity offering the internship or residency. 13 through 17 clock hours or 10 through 13 semester hours, as appropriate.	As established by accrediting association or entity offering the internship or residency. 9 through 12 clock hours or 7 through 9 semester hours, as appropriate.	As established by accrediting association or entity offering the internship or residency. 5 through 8 clock hours or 4 through 6 semester hours, as appropriate.	As established by accrediting association or entity offering the internship or residency. 1 through 4 clock hours or less than 4 semester hours, as appropriate.
Training establishment.	Apprentice or other on-the-job ⁵ .	Standard workweek.		Full time only.....		
Agricultural.....	Farm Cooperative ⁶ .	10 clock hours net instruction ⁷ .	7 clock hours net instruction.	5 clock hours net instruction.		No provision.

¹Independent study programs will be measured as provided in § 21.4280. Cooperative courses may be measured on a full-time basis only.

²Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full-time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement.

When 12 hours is properly certified as full-time, 9 through 11 hours will be measured as $\frac{3}{4}$ time, 6 through 8 hours will be measured as $\frac{1}{2}$ time, 4 through 5 hours will be measured as less than $\frac{1}{2}$ time and more than $\frac{1}{4}$ time, and 1 through 3 hours will be measured as $\frac{1}{4}$ time or less. All other undergraduate courses will be measured as indicated in the table for undergraduate or professional courses as appropriate, but where 13 credit hours or the equivalent is certified as full time, $\frac{3}{4}$ time will be 10 through 12 hours. When in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, $\frac{3}{4}$ time, $\frac{1}{2}$ time, $\frac{1}{4}$ time, less than $\frac{1}{4}$ time and more than $\frac{1}{4}$ time, or $\frac{1}{4}$ time, the certification will be accepted for measurement purposes.

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him or her effective March 26, 1970, if he or she was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. chapters 34 and 35 in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(f) the noncredit deficiency courses will be converted on the basis of the applicable measurement criteria, that is, 18, 25 or 30 clock hours, 4 "Carnegie Units", or 12, 13 or 14 (as appropriate) semester hours equal full time. The credit-hours equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

³Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

⁴Supervised study must be excluded.

⁵Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

⁶In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

⁷For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

(38 U.S.C. 1682, 1732, 1777, 1787, 1788)

[44 FR 52503, Oct. 31, 1979, as amended at 45 FR 73479, Nov. 5, 1980]

§ 21.4271 Trade or technical; high schools.

(a) *Shop practice predominates.* Trade or technical courses, which include shop practice as an integral part of the course, will be measured on a basis of clock hours of attendance per week. This includes such courses under the supervision of a college or university where credit is not given toward a standard college degree.

(b) *Theoretical or classroom instruction predominates.* A technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on the basis of clock hours of net instruction per week. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

(c) *High schools.* Courses offered at the secondary school level which lead to a high school diploma or the equivalent will be measured on the basis of clock hours of instruction per week, or on the number of units required per year. Enrollment in courses at a secondary school level leading to a high school diploma or the equivalent will not be approved for eligible children under chapter 35. Eligible spouses and surviving spouses under chapter 35 may pursue such courses under the Special Assistance for the Educationally Disadvantaged program.

[31 FR 6774, May 6, 1966, as amended at 39 FR 45237, Dec. 31, 1974; 41 FR 47930, Nov. 1, 1976; 43 FR 35307, Aug. 9, 1978]

§ 21.4272 Collegiate undergraduate; credit-hour basis.

An undergraduate college level course in an institution of higher learning will be measured on a credit-hour basis provided all the conditions under paragraphs (a), (b), (c)(1), or (c)(2) of this section are met.

(a) *Degree courses; accredited or candidate.* The course is offered by a college or university and is accredited by a nationally recognized association for degree level programs or by one of the nationally recognized Regional Accrediting Associations or is offered by a college or university which is a "Candidate for Accreditation" by one of the nationally recognized Regional Accrediting Associations or one of the other nationally recognized accrediting associations.

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree which is granted by the school offering the course.

(b) *Degree courses; nonaccredited.* The course is not accredited at a college degree level by a recognized accrediting association and is offered by a college or university which is not accredited or a recognized candidate for accreditation by one of the nationally recognized Regional Accrediting Associations or by one of the other nationally recognized accrediting associations.

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree, which is granted by the school offering the degree under authority specifically conferred by a State education agency, and

(3) The school will furnish a letter from a State university or letters from three schools that are full members of a nationally recognized accrediting association. In each letter the State university or accredited school must certify either:

(i) That credits have been accepted on transfer at full value without reservation, in partial fulfillment of the requirements for a baccalaureate or

higher degree for at least three students within the last 5 years, and that at least 40 percent of the subjects within each curriculum, for which credit-hour measurement is sought, has been accepted without reservation by the certifying State university or accredited school, or

(ii) That in the last 5 years at least three students, who have received a baccalaureate or higher degree as a result of having completed the nonaccredited course, have been admitted without reservation into a graduate or advanced professional program offered by the certifying State university or accredited school. (38 U.S.C. 1788(b))

(c) *Nondegree courses*—(1) *Accredited school*. The nondegree course is offered by a degree granting college or university which is accredited as a degree granting school by a nationally recognized accrediting association, and

(i) The course is offered on a semester- or quarter-hour basis, and

(ii) The course requires not less than high school graduation or equivalent for admission, and

(iii) The school certifies that credit for the subjects within the curriculum, desired to be measured on a credit-hour basis, is granted upon transfer to the element of the school which offers an associate or higher degree, and credit is awarded at full value, i.e., credit hour for credit hour toward partial fulfillment of the requirements for an associate or higher degree, or

(2) *Nonaccredited school*. The nondegree course offered by a degree granting college or university which is not accredited as a degree granting institution, and the school meets the conditions of paragraphs (c)(1) (i), (ii), and (iii) of this section and furnishes proper certification for its degree courses to which the credits transfer as provided in paragraph (b)(3) of this section.

(d) *Courses; measurement equivalency*. Where a term is not a standard semester or quarter as defined in § 21.4200(b), the equivalent for full-time training will be measured by multiplying the credits to be earned in the session by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarters, and dividing the

product by the number of whole weeks in the session. The resulting quotient will be the semester hours on which educational assistance allowance will be computed using the criteria of § 21.4270 proper or the criteria of footnote 3 to that section, whichever is appropriate. In determining whole weeks for this formula, 3 days or less will be disregarded and 4 days or more will be considered a full week. In no case will a course be measured as full-time when less than 14 standard class sessions per week (or 12 standard class sessions if 12 credit hours is full time at the school) are required.

(e) *Credit courses; special*. Where the course is acceptable for credit but credit may not be awarded to the veteran or eligible person because he or she has not met college entrance requirements or for some other valid reason, the course will be measured the same as if it were pursued for credit provided the veteran or eligible person performs all of the work prescribed for other students who are enrolled for credit.

(f) *Noncredit courses*—(1) *Measurement*. Except for courses leading to a high school diploma or the equivalent, noncredit courses given by an institution of higher learning shall be measured on a quarter- or semester-hour basis if considered by the institution to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the school. Other noncredit courses shall be measured under § 21.4270 (a), (b), (c), (d), (k), or (l) as appropriate. Where the school requires the veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet certain scholastic or entrance requirements, the school will certify the credit-hour equivalent of such noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The course will be measured on the total credit hour and the credit-hour equivalency.

(2) *Entitlement charge*. For awards to eligible children under chapter 35, the entitlement charge for noncredit courses will be made on the same basis as measurements for payment pur-

poses. For awards under chapter 34 and for spouses and surviving spouses, under chapter 35, no entitlement charge will be made for any noncredit deficiency, remedial or refresher course on a secondary school level.

(g) *Definitions*—(1) *Deficiency Course*. A deficiency course is any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(2) *Remedial course*. A special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study or to overcome a handicap, such as in speech.

(3) *Refresher course*. A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13407, Sept. 23, 1967; 38 FR 8659, Apr. 5, 1973; 38 FR 12110, May 9, 1973; 41 FR 47930, Nov. 1, 1976; 42 FR 49455, Sept. 27, 1977; 43 FR 35307, Aug. 9, 1978; 43 FR 49982, Oct. 26, 1978]

§ 21.4273 Collegiate graduate.

(a) *In residence*. An accredited graduate or advanced professional course, including law as specified in § 21.4274, pursued in residence at an institution of higher learning will be assessed in accordance with § 21.4272 unless it is the established policy of the school to consider less than 14 semester hours or the equivalent as full-time enrollment, or the course includes research, thesis preparation, or a comparable prescribed activity beyond that normally required for the preparation of ordinary classroom assignments. In either case a responsible official of the school will certify that the veteran or eligible person is pursuing the course full, three-fourths, one-half, less than one-half but more than one-quarter, or one-quarter or less time.

(b) *In absentia*. A responsible official of the school will certify a program of research pursued by a veteran or eligible person in absentia as full, three-fourths, one-half, less than one-half but more than one-quarter, or one-quarter or less time, and the activity will be assessed by the Veterans Administration accordingly when:

(1) The research activity is defined and organized so as to enable the certifying official to evaluate the time required for its successful pursuit, and

(2) The time certified for the research activity is independent of the time devoted to any employment situation in which the veteran or eligible person might be engaged.

(c) *Undergraduate or combination*. Undergraduate courses required by the school will be assessed in terms of credit hours, even though the veteran or eligible person is enrolled as a graduate student. If the veteran or eligible person is taking both graduate and undergraduate courses, the school will give the credit-hour equivalent of the graduate work so that this equivalent may be combined with the undergraduate credits to determine the extent of training.

[31 FR 6774, May 6, 1966, as amended at 31 FR 8293, June 14, 1966; 32 FR 4411, Mar. 23, 1967]

§ 21.4274 Law courses.

(a) *Accredited*. A law course in an accredited law school leading to a standard professional law degree will be assessed as provided in § 21.4273(a).

(b) *Nonaccredited*. A law course leading to a professional law degree, completion of which will satisfy State educational requirements for admission to legal practice, pursued in a nonaccredited law school which requires for admission to the course at least 60 standard semester units of credit or the equivalent in quarter units of credit, will be assessed on the basis of 12 class sessions per week for full-time attendance. If the course does not meet these requirements it will be assessed on the basis of clock hours of attendance per week.

[36 FR 18304, Sept. 11, 1971, as amended at 38 FR 19371, July 20, 1973; 41 FR 47931, Nov. 1, 1976]

§ 21.4275 Practical training courses; measurement.

(a) *Medical, osteopathic, and dental internships and residencies*. Medical, osteopathic, and dental internship and residency courses will be measured as provided in § 21.4270(b) if accredited

and approved in accordance with § 21.4265(a) (38 U.S.C. 1788(b))

(b) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.

(c) *Medical and dental specialty courses.* (1) Medical and dental specialty courses offered by a school whether accredited or nonaccredited, shall be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate.

(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories or medical centers which are accredited by a nationally recognized accrediting agency shall be measured on the basis of clock hours of attendance per week.

(d) *Medical and dental assistants courses for the Veterans Administration.* Programs approved in accordance with the provisions of § 21.4265(d) will be measured on a clock-hour basis as appropriate in accordance with § 21.4270, however, the program will be regarded as full-time instructional training: *Provided*, The combined total of the classroom and other formal instruction portion of the program and on-job-training portion of the program requires 30 or more clock hours of attendance per week.

(e) *Professional training courses.* Nonmedically related professional training courses, such as the clinical pastoral course, shall be measured in semester hours of attendance or clock hours of attendance per week, whichever is appropriate.

(f) *Other practical training courses.* These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate, if approved under

§ 21.4265(f). (See § 21.4265 for approval.)

[41 FR 26684, June 29, 1976, as amended at 43 FR 25429, June 13, 1978; 45 FR 73480, Nov. 5, 1980]

§ 21.4276 Special assistance: 38 U.S.C. chapter 35.

(a) *Need for special assistance.* The assistance of a vocational rehabilitation specialist or of a counselor with assigned vocational rehabilitation specialist duties will be provided in connection with a program of education when it is determined by the Vocational Rehabilitation Board that, although the eligible person is not in need of special restorative training, he or she will require assistance in order to pursue a program of education successfully because of the handicapping effects of a physical or mental condition, or because of personal adjustment problems. The determination as to need for such assistance will be made by the Vocational Rehabilitation Board upon the basis of information developed in the counseling process, including data and opinions obtained from medical and other specialists as appropriate in the case.

(b) *Factors.* A determination that an eligible person needs such assistance will be made when one or more of the following conditions is found to exist:

(1) The handicapping effects of a physical or mental condition are such that assistance will be required in order for the eligible person to enter and successfully pursue a program of education.

(2) The eligible person has a history of a behavioral pattern which if continued would interfere with or impede his or her entrance into a pursuit of a program of education.

(c) *Recommendations.* The Vocational Rehabilitation Board will prepare a report as to the need for assistance and the factors taken into account in arriving at the determination. Where an affirmative determination of need is found, the Board will include suggestions and recommendations relative to the nature of the assistance contemplated.

(d) *Duration.* When it is determined by the Vocational Rehabilitation

Board that an eligible person needs assistance, the parent or guardian will be informed of the finding and of the underlying reasons. If the parent or guardian concurs in the finding, the assistance will be provided as is indicated until the progress and adjustment of the eligible person in his or her program of education are such that the assistance is no longer needed.

(e) *Nature of assistance.* Assistance by the vocational rehabilitation specialist will include:

(1) Assisting the eligible person and the school in the implementation of the planned program of education;

(2) Determining the progress of the eligible person through visits at the school as well as through review of records and, when indicated, taking action designed to solve problems which may interfere with satisfactory pursuit of the program of education;

(3) Making referral when indicated and coordinating action with responsible individuals and agencies in order to alleviate or prevent conditions arising which may negatively affect progress;

(4) Referring the case of an eligible person who is receiving assistance to the Vocational Rehabilitation Board when need for special restorative training appears to be for consideration, or the advice and assistance of the Board is needed to resolve difficulties;

(5) Assisting the parent or guardian in locating and arranging for training by an educational institution when the eligible person is homebound. Only eligible persons who qualify for training under § 21.3300 may receive such training at home from any person or organization which is not an "educational institution."

[31 FR 6774, May 6, 1966, as amended at 40 FR 42881, Sept. 17, 1975]

§ 21.4277 Discontinuance; unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain

satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if:

(1) The veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending, or

(2) The veteran or eligible person is not progressing at a rate that will permit him or her to graduate within the approved length of the course based on the training time as certified to the Veterans Administration by the educational institution plus an additional length of time as stated in this paragraph, notwithstanding the school's policy, unless mitigating circumstances are found.

(i) If a school is organized on a term basis with credit-hour measurement it will report unsatisfactory progress, if the student accumulates unsatisfactory punitive grades in the equivalent of more credit hours than the minimum full-time training load, for Veterans Administration purposes (normally 12 or 14 hours).

(ii) If a school is organized on a term basis without credit-hour measurement it will report unsatisfactory progress, if the student will be required to extend the equivalent of more than one term based on the minimum full-time requirement.

(iii) If a school is not organized on a term basis, for Veterans Administration purposes, it will report unsatisfactory progress when it determines that the student will require an extension beyond 10 percent of the approved length of the course to complete the program.

(b) *Mitigating circumstances.* Mitigating circumstances include, but are not limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the veteran or eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the veteran or eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V of chapter 34 or section 1733 of chapter 35, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) The course is discontinued by the school.

(6) The veteran is required to perform unanticipated active duty military service, including active duty for training.

(c) *Suspension.* (1) After November 22, 1977 the Director of a Veterans Administration field station of jurisdiction may temporarily suspend the requirements of paragraphs (a)(2) and (d) of this section as they apply to any main campus branch or extension of an educational institution that is fully accredited by a recognized regional or national accrediting agency. Any educational institution which wants a suspension must make specific application to the Director through the State approving agency. The beginning date of the suspension shall be set by the Director on the basis of the evidence of record, but in no event shall it be earlier than November 23, 1977. A suspension may be terminated by the Director of the Veterans Administration field station upon written notice to the Chief Officer of the educational institution. A suspension must be terminated whenever a school no longer meets the criteria set forth in paragraphs (c)(1) (i), (ii) and (iii) of this section. No suspension may be granted unless:

(i) The educational institution has submitted a copy of the catalog for the appropriate main campus, branch or extension to the Veterans Administration field station through the State approving agency.

(ii) The educational institution certifies that the policies pertaining to standards of progress or conduct contained in the catalog or bulletin pursuant to § 21.4253(d)(1) are being enforced.

(iii) The catalog or bulletin states these policies fully and clearly. This requirement will be satisfied when the policy and regulations relative to standards of progress and conduct:

(a) Are stated without omission.

(b) Include a statement describing grades or credit assigned for completed courses.

(c) Specify the points during the course of study which will be designated for evaluation of student progress. Schools operating on a term basis must make such an evaluation at the end of each term, quarter or semester.

(d) Specify as satisfactory a minimum grade average or credit level for each evaluation. These levels must be logically related to the minimum graduation requirements.

(e) Require that at each evaluation point the credit level or grade average maintained by the veteran or eligible person must be compared with the standard.

(f) State the action to be taken by the school when the standards are not met. This must include any provisions for interrupting the student's enrollment, provisions for probationary periods, if any, and conditions for the student's reentrance.

(g) State the progress records kept by the institution and furnished the student.

(h) State the conditions for dismissal for unsatisfactory conduct, and the conditions for reentrance in the school after such a dismissal. (38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(2) An educational institution, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station.

(38 U.S.C. 1674, 1724; Pub. L. 95-202, 91 Stat. 1433)

(d) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 210(c), 1674 and 1724)

[40 FR 33825, Aug. 12, 1975, as amended at 43 FR 35307, Aug. 9, 1978; 45 FR 43172, June 26, 1980]

CROSS REFERENCE. Reports by schools; requirements. See § 21.4203.

§ 21.4278 Reentrance after discontinuance.

(a) *Conditions permitting reentrance after discontinuance.* A veteran or eligible person may be reentered following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(1) The cause of unsatisfactory conduct or progress has been removed, and

(2) The Veterans Administration determines that the program which the veteran or eligible person now proposes to pursue is suitable to his or her aptitudes, interests and abilities. (38 U.S.C. 1674 and 1724)

(b) *Programs which may be reentered after discontinuance.* Reentrance may be for the same program, for a revised program or for an entirely different program depending on the cause of the discontinuance and the removal of that cause. (38 U.S.C. 1674 and 1724)

[45 FR 67093, Oct. 9, 1980]

CROSS REFERENCE: Counseling. See § 21.4100.

§ 21.4279 Combination correspondence-residence program.

(a) A program of education may be pursued partly in residence and partly by correspondence for the attainment of a predetermined and identified objective under the following conditions:

(1) The correspondence and residence portions are pursued sequentially; that is, not concurrently.

(2) It is the practice of the institution to permit a student to pursue a part of his or her course by correspondence in partial fulfillment of the requirements for the attainment of the specified objective.

(3) The total credit established by correspondence does not exceed the maximum for which the institution will grant credit toward the specified objective.

(4) The school has certified to the Veterans Administration that all requirements of law have been met, including that portion of section 1780(a), title 38, United States Code, and § 21.4256 requiring the school to certify that the correspondence portion of a course leading to a vocational objective requires 6 months or more for completion. See § 21.4252(e). (38 U.S.C. 1780(a); Pub. L. 94-502, 90 Stat. 2383)

(b) The rate of educational assistance allowance payable shall be computed as set forth in §§ 21.4270 and 21.4136(a).

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each \$311 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 95-202, 91 Stat. 1433)

(2) The charges for the residence portion of the program must be separate from those for the correspondence portion.

[38 FR 7394, Mar. 21, 1973, as amended at 39 FR 45237, Dec. 31, 1974; 43 FR 35308, Aug. 9, 1978; 44 FR 62505, Oct. 31, 1979]

§ 21.4280 Independent study leading to a standard college degree.

(a) An eligible veteran or person may receive an educational assistance allowance for pursuit of an independent study course under the following conditions:

(1) The course is offered by a college or university;

(2) The course leads to or is fully creditable toward a standard college degree;

(3) The course consists of a prescribed program of study with provision for interaction either by mail, telephone, personally or by class attendance between student and the regularly employed faculty of the university or college; and

(4) The course is approved by the State approving agency.

(b) The independent study program shall be measured as less than one-half time training as follows:

(1) If the college or university evaluates the course in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per semester, or equivalent, are 4 or more and measured as one-quarter time or less for 1 through 3 semester hours per semester, or equivalent.

(2) If the college or university does not evaluate the independent study program in standard semester or quarter hours or the equivalent, the independent study program shall be measured as less than one-half but more than one-quarter time training.

(c) An eligible veteran or person who is pursuing an independent study program shall be paid an educational assistance allowance based on the training time determined in paragraph (b) of this section at the institutional rate prescribed in § 21.4136(a). If independent study subjects and subjects requiring class attendance are pursued concurrently and both are measured on a credit-hour basis, the allowable rate shall be determined on the basis of the combined training load provided a major portion of the hours are by class attendance. When a major portion of the course is not by class attendance, but the portion that is by class attendance would equal half-time or more, the number of independent study hours shall be converted to the highest number of hours consistent with less than half-time training as stated in § 21.4270. The converted independent study credit hours shall be

added to the credit hours offered by class attendance. The allowable rate shall be determined on the basis of the combined training load. When a major portion of the course is not by class attendance, the portion that is by class attendance is equal to less than half-time or less, and the portion that is by independent study is equal to half-time or more, the number of independent study hours shall be converted to the highest number of hours consistent with less than half-time training as stated in § 21.4270. The training load shall be determined by adding the resulting hours together. The monthly rate shall be determined by computing the monthly rates separately for independent study and class attendance and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load. When a major portion of the course is not by class attendance and both the portion that is by class attendance and the independent study portion are each equal to less than half-time or less, the training load shall be determined by adding the hours attributable to each together. The monthly rate shall be determined by computing the monthly rates separately for independent study and class attendance and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load. When measurement is different (i.e., class attendance on a credit-hour basis and independent study under paragraph (b)(2) of this section), the appropriate rate for each part shall be determined and the combined rates paid, but not to exceed the full-time institutional allowance rate. (38 U.S.C. 1682(e) and 1732(c))

[39 FR 45237, Dec. 31, 1974, as amended at 43 FR 38308, Aug. 9, 1978]

Subpart E—Nondiscrimination in Vocational Rehabilitation and Education Programs—title VI, Civil Rights Act of 1964

AUTHORITY: 5 U.S.C. 301, 38 U.S.C. 210(c)(1) and 38 CFR 18.9(d) and Appendix A, Part 18.

§ 21.4300 Civil rights assurances; title VI, Pub. L. 88-352.

(a) Payments under 38 U.S.C. chapters 31, 34, 35, and 36 are subject to the provisions of Part 18 of this chapter. See § 21.4001(d). Evidence that a school or training establishment has enrolled or would enroll students without regard to race, color or national origin will be considered as meeting the status of compliance for Veterans Administration purposes. See § 18.4(a) of this chapter.

(b) The national organizations being furnished space and office facilities under the provisions of 38 U.S.C. 3402(a)(2) are subject to the provisions of Part 18 of this chapter. Evidence that such an organization has represented or would represent any person in the preparation, presentation, and prosecution of claims under laws administered by the Veterans Administration without regard to race, color or national origin will be considered as meeting the status of compliance for Veterans Administration purposes. See § 18.4(a) of this chapter.

[35 FR 10765, July 2, 1970]

§ 21.4301 Institutions of higher learning; elementary and secondary schools; medical institutions.

For the purpose of this subpart, the term "institution of higher learning" includes post-high-school institutions which offer nondegree courses for which credit is given and which would be accepted on transfer by a degree-granting institution towards a baccalaureate or higher degree.

(a) Authority has been delegated to the Secretary, Department of Health, Education, and Welfare to perform responsibilities of the Veterans Administration and the responsible Veterans Administration official under title VI of the Civil Rights Act of 1964 and the Veterans Administration regulations issued thereunder (Part 18 of this chapter) with respect to institutions of higher learning, hospitals and other health facilities and elementary and secondary schools and school systems in connection with either providing or seeking approval to provide vocational rehabilitation to eligible persons under chapter 31 of title 38, U.S.C., or

education or training to eligible persons under chapters 34, 35, or 36 of title 38, U.S.C.

(1) The compliance responsibilities so delegated include:

(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under § 18.4 of this chapter;

(ii) Mailing, receiving, and evaluating compliance reports under § 18.6(b) of this chapter; and

(iii) All other actions related to securing voluntary compliance or related investigations, compliance reviews, complaints, determinations of apparent failure to comply and resolutions of matters by informal means.

(2) The Veterans Administration specifically reserves to itself responsibilities for effectuation of compliance under §§ 18.8, 18.9, and 18.10 of this chapter. Not included in the delegation to the Secretary, Department of Health, Education, and Welfare and specifically reserved to the Veterans Administration is the exercise of compliance responsibilities with respect to:

(i) Postsecondary schools which do not offer a program or courses leading, or creditable, toward the granting of at least a bachelor's degree, or its equivalent;

(ii) Privately owned and operated proprietary technical, vocational, and other private schools at the elementary or secondary level; and

(iii) Those institutions of higher learning and elementary and secondary schools and school systems which, as of January 3, 1969, have already been subjected to formal noncompliance proceedings by the Department of Health, Education, and Welfare and have had their right to receive Federal financial assistance from that agency terminated for noncompliance with title VI of the Civil Rights Act of 1964.

The Veterans Administration also retains the right to exercise delegated compliance responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health, Education, and Welfare.

(b) Any institution of higher learning or a medical institution which is listed by the Department of Health,

Education, and Welfare as having filed an assurance of compliance will be accepted as having met the requirements of the law for the purpose of payment of benefits under 38 U.S.C. chapters 31, 34, 35, or 36. Any elementary or secondary school which is not on the Department of Health, Education, and Welfare list of noncomplying institutions will also be accepted as having met the requirements.

(c) If the Department of Health, Education, and Welfare finds that a school which has signed an assurance of compliance is apparently in non-compliance, action will be initiated by that Department to obtain compliance by voluntary means. If voluntary compliance is not achieved, the Veterans Administration will join in subsequent proceedings.

(d) An institution which is on the Department of Health, Education, and Welfare list of noncomplying institutions will be considered to be in a status of compliance for Veterans Administration purposes if an assurance of compliance is filed with the Veterans Administration and actual compliance is confirmed. Certificates of eligibility may be issued and enrollments approved until such time as the Veterans Administration has made an independent determination that the institution is not in compliance.

[34 FR 5846, Mar. 28, 1969]

CROSS REFERENCES: See § 18.12(c) of this chapter and § 21.4304(c).

§ 21.4302 Proprietary vocational schools and training establishments.

Each institution and training establishment having veterans enrolled under 38 U.S.C. chapters 31, 34, or 35 will be requested to sign an assurance of compliance. The Chief Benefits Director or his designee will conduct periodic compliance reviews, receive and investigate complaints, determine whether there is a failure to comply and whether compliance can be obtained by informal means.

[35 FR 10766, July 2, 1970]

§ 21.4303 State approving agencies.

(a) *General.* State approving agencies will request an assurance of compliance when approval is initially re-

quested from each institution other than those for which the Department of Health, Education, and Welfare has been delegated authority in § 21.4301(a).

(b) *Vocational schools and training establishments.* State approving agencies will request an assurance of compliance from each institution on the list of noncomplying institutions, and from each proprietary vocational, trade, technical, or other institution and such schools not a part of a public elementary or secondary school, and from employers offering apprentice or other on-job training.

(c) *Approval of courses.* Courses may be approved notwithstanding that the institution may fail or refuse to sign an assurance of compliance. The State approving agency may take this matter into consideration in determining whether the course should be approved and may, if it chooses, make evidence of compliance with title VI of the Civil Rights Act an added criterion for approval.

§ 21.4304 Assurance of compliance received—institutions of higher learning; elementary and secondary schools; medical facilities.

(a) *Signed assurance.* The original of the signed assurance of compliance will be sent to the Department of Health, Education, and Welfare. If the institution is on the Department of Health, Education, and Welfare list of noncomplying institutions, action will be taken as provided in paragraph (b) of this section.

(b) *Confirmation of compliance.* If an assurance of compliance is received from an institution which is on the Department of Health, Education, and Welfare list of noncomplying institutions, a Veterans Administration representative will visit the school to ascertain whether the school is actually in compliance. If the school is found to be in compliance for Veterans Administration purposes, the Department of Health, Education, and Welfare will be so notified.

(c) *Noncompliance.* If the school is found to be in noncompliance for Veterans Administration purposes, the Department of Health, Education, and

Welfare will be requested to furnish a copy of their records, including a transcript of hearing reports, leading to the finding of noncompliance by that agency. When this data has been received, action will be taken as prescribed in Part 18b of this chapter.

[34 FR 5846, Mar. 28, 1969, as amended at 35 FR 10766, July 2, 1970]

§ 21.4305 Noncompliance; complaints; initial action.

(a) *Veterans Administration action.* If an institution or employer not in a category for which compliance responsibility has been delegated to the Secretary, Department of Health, Education, and Welfare fails or refuses to sign an assurance of compliance or a complaint is received, a Veterans Administration employee will visit the institution and attempt to secure compliance. If the institution or employer is unwilling to sign the assurance of compliance or to remedy the complaint, the Chief Benefits Director will report to the General Counsel that compliance cannot be secured by voluntary means.

(b) *Institutions of higher learning; elementary and secondary schools; medical institutions.* If the institution is unwilling to sign an assurance of compliance or if a complaint indicative of noncompliance is received, the matter will be referred to the Department of Health, Education, and Welfare to initiate procedure to obtain compliance by informal means. This action will not be taken when that Department has previously found the institution to be in noncompliance. If the Department reports that it has been unable to obtain compliance through voluntary means, the action outlined in Part 18b of this chapter will be taken.

[35 FR 10766, July 2, 1970]

§ 21.4306 Payments after final agency action.

When there has been a final agency determination that a school or training establishment is not in compliance:

(a) *Certificates of eligibility.* No new certificates of eligibility will be issued for courses in that institution.

(b) *Enrollments.* For a veteran or eligible person who was pursuing an approved program of education or training on the day before the date the agency decision becomes final, payments may be continued and reenrollment authorized until his program is completed. Initial enrollment may be authorized only if the commencing date of benefits is earlier than the date of final agency action.

(c) *Chapter 31.* Payments under 38 U.S.C. chapter 31 to a school or training establishment may be authorized only through the date of the enrolled veteran's program.

(d) *Reporting fees.* The annual reporting fee authorized by § 21.4206 is payable to a school which is found not to be in compliance only for those veterans or eligible persons continued to enrollment, as authorized by paragraph (b) of this section, as of October 31, of each year.

[35 FR 10766, July 2, 1970]

§ 21.4307 Posttermination compliance.

When an institution has been found by the Veterans Administration not to be in compliance, and subsequently is found to be in a status of compliance, payments otherwise in order may be authorized commencing the date compliance is certified.

[35 FR 10766, July 2, 1970]

Subpart F—Education Loans

AUTHORITY: 72 Stat. 1114, 88 Stat. 1589; 38 U.S.C. 210, 1686, 1737, Subchapter III, Chapter 36.

§ 21.4500 Definitions.

(a) *General.* These definitions shall be applicable for Subpart F of Part 21.

(b) *Education loan.* A loan made by the Veterans Administration to an eligible Veteran or person pursuant to section 1798, title 38, U.S.C.

(c) *Academic year.* The 9 month period usually from August or September to May or June, which includes generally two semesters or three quarters.

(d) *Loan period.* (1) Loans made for enrollment periods which begin before August 1, 1978 are normally to be

made for a quarter, semester, term, academic year or academic year plus a summer term. Loans made for enrollment periods which begin after July 31, 1978, normally are to be made for a quarter, semester, summer term or two consecutive quarters.

(2) A loan made to a veteran or eligible person attending a course not organized on a term, quarter or semester basis will be granted for a term of not more than 12 months provided the course requires at least 6 months at the full-time rate to complete, and the course begins before August 1, 1978. If such a course begins after July 31, 1978, a loan will be granted for a period of not more than 6 months at a time.

(i) The Director of the Veterans Administration field station of jurisdiction may waive the requirement that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:

(a) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.

(b) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.

(c) The default rate on all Veterans Administration education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.

(d) The default rate on all loans ever made to students at the educational institution pursuant to loan programs administered by the Department of Health, Education, and Welfare does not exceed 5 percent or 5 cases, whichever is greater.

(e) The course is at least 3 months long.

(f) The course is approved for full-time attendance only.

(g) No more than 35 percent of the students attending the course are receiving educational assistance from the Veterans Administration.

(h) The Field Director for the region in which the Veterans Administration

field station is located concurs in the waiver.

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education and Rehabilitation Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education and Rehabilitation Service. He or she shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but he or she shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met.

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Veterans Administration field station of jurisdiction within 30 days of the date on which one of those requirements is not met. (38 U.S.C. 1798(c); Pub. L. 95-202, 91 Stat. 1433)

(e) *Total amount of financial resources.* This term means the total of the following:

(1) The annual adjusted effective income of the veteran or other eligible person, less Federal income taxes paid or payable by the veteran or other eligible person with respect to such income, as described in paragraph (h) of this section.

(2) The amount of cash assets of the veteran or other eligible person, as described in § 21.4502(b)(2).

(3) The amount of financial assistance received by the veteran or other eligible person under the provisions of title IV of the Higher Education Act of 1965, as amended.

(4) For a loan period which begins before August 1, 1978, educational assistance received or receivable for the loan period by the veteran or eligible person under section 1631, 1661 or subchapter II of chapter 35, title 38, U.S.C., exclusive of an education loan. For a loan period which begins after

July 31, 1978, educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, U.S.C., which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

(5) Financial assistance received by the veteran or other eligible person under any scholarship or grant other than the one specified in paragraph (e)(3) of this section.

(6) Veterans Administration work-study allowance received or receivable by the veteran under section 1685, title 38, U.S.C., during loan periods which begin after July 31, 1978. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) For loan periods which begin prior to August 1, 1978, this term means the actual charge per student for tuition, fees, room and board (or expenses related to commuting a reasonable distance), books, and an allowance for such other expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled.

(2) For loan periods which begin after July 31, 1978, this term means the actual per student charges for tuition, fees and books, an allowance for commuting (this allowance will be based on 12 cents per mile for distances which shall not exceed normal commuting distance), an allowance for other such expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and a room and board allowance. The room and board allowance shall be determined as follows:

(i) If the educational institution actually provides the veteran or eligible person with room and board, the allowance shall equal the actual charges to the veteran or eligible person for room and board.

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the veteran or eligible person, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible

person for room and board, or the amount for room and board which the educational institution would have charged the veteran or eligible person, had the educational institution provided him or her with room and board, whichever is the lesser.

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board. (38 U.S.C. 1798(b))

(g) *Loan fee.* This shall be a fee collected by discounting the amount of any loan granted to a veteran or eligible person by an appropriate amount. The fee shall be collected for each separate loan authorized. Effective January 1, 1975, the amount of the fee shall be 3 percent of the total loan amount.

(h) *Annual adjusted effective income.* (1) For loan periods beginning before August 1, 1978, this income shall be considered to be the net taxable income less the Federal income tax paid or payable of the veteran or other eligible person. It is not limited to such income which may be available for use by the veteran or eligible person for education needs. The amount available for education needs is to be determined in accordance with § 21.4503.

(2) For loan periods beginning after July 31, 1978, this income shall include:

(i) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration. This includes income from sources such as Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, Social Security benefits, etc.

(ii) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the applica-

tion for the education loan is received by the Veterans Administration, less:

(a) Authorized deductions for exemptions;

(b) Itemized or standard deduction, whichever is greater;

(c) Mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(i) *School term.* This phrase means:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning or in the case of an institution of higher learning not operating on a quarter or semester system, a period of 9 to 11 months provided:

(i) The program of education is divided into segments, and

(ii) At least one segment is completed prior to or during the 9 to 11-month period. (38 U.S.C. 1682A(e); Pub. L. 95-202; 91 Stat. 1433)

[40 FR 31764, July 29, 1975, as amended at 44 FR 62505, Oct. 31, 1979]

§ 21.4501 Eligibility.

(a) *General.* The criteria for determining a veteran's or other eligible person's eligibility for an education loan depend upon whether or not the veteran's or eligible person's delimiting period as determined by § 21.1042, § 21.1043, § 21.3041 or § 21.3046 has expired. Any veteran or eligible person shall be entitled to an education loan if he or she meets the criteria of this paragraph as well as the criteria of either paragraph (b) or (c) of this section as appropriate. The veteran or eligible person must:

(1) Have financial resources that may be reasonably expected to be expended for education needs and which are insufficient to meet the expected actual cost of attendance; and

(2) Execute a promissory note payable to the Veterans Administration, as provided by § 21.4504.

(b) *Additional criteria for veterans and eligible persons eligible to receive educational assistance allowance.* An

education loan shall be granted to a veteran or eligible person whose delimiting period as determined by § 21.1042, § 21.1043, § 21.3041 or § 21.3046 has not expired if the veteran or eligible person meets the eligibility requirements found in paragraph (a) of this section and if the veteran or eligible person:

(1) At the time the loan is authorized, is in attendance at an educational institution on at least a half-time basis, and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective; unless the Director of the VA field station of jurisdiction waives these requirements, in whole or in part, upon determination that to do so is in the interest of the veteran or eligible person and the Federal Government as prescribed in § 21.4500; and

(2) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, U.S.C.; and

(3) Must be required to pay to the educational institution for tuition and fees an amount equal to or greater than an amount to be determined as follows:

(i) If the veteran or eligible person is enrolled in a course organized on a term basis, the amount shall be determined by multiplying \$700 by $\frac{1}{2}$ if the proposed loan period is 2 consecutive quarters, by multiplying \$700 by $\frac{1}{4}$ if the proposed loan period is one semester, or by multiplying \$700 by $\frac{1}{8}$ if the proposed loan period is either 1 quarter or is a term of 8 weeks or more, not part of the ordinary school year. The resulting figure is multiplied by 1 if the veteran or eligible person is a full-time student on the day the loan is authorized, by $\frac{1}{2}$ if the veteran or eligible person is a three-quarter time student on the day the loan is authorized or by $\frac{1}{4}$ if the veteran or eligible person is a half-time student on the day the loan is authorized.

(ii) If the veteran or eligible person is not enrolled in a course organized on a term basis and the proposed loan

period is 6 months in length, the amount shall be determined in the same manner as for a veteran or eligible person whose proposed loan period is 2 quarters.

(iii) If the veteran or eligible person is not enrolled in a course organized on a term basis and the proposed loan period is less than 6 months in length, the amount shall be:

(a) An average of \$77 per month of the proposed loan period if the veteran is a full-time student on the day that the loan is authorized,

(b) An average of \$57 per month of the proposed loan period if the veteran is a three-quarter time student on the day that the loan is authorized, or

(c) An average of \$38 per month of the proposed loan period if the veteran is a half-time student on the day that the loan is authorized. (38 U.S.C. 1798(g); Pub. L. 95-476; 92 Stat. 1497)

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.* (1) An education loan may be granted to an eligible veteran, spouse or surviving spouse whose delimiting period as determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) has expired.

(2) A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she:

(i) Has unused entitlement provided under section 1661 or 1711, title 38, U.S.C., and

(ii) During the term, quarter or semester for which the loan is granted, is enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) and

(iii) Was enrolled in a program of education on a full-time basis:

(a) On the date his or her period of eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), or

(b) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), if the delimiting date fell during a school break or summer term.

(3) The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(i) November 23, 1979, or 2 years after the expiration of the period of eligibility as determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), whichever is later or

(ii) The date on which the entitlement of the eligible veteran, spouse or surviving spouse is exhausted, or

(iii) The date on which the eligible veteran, spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) expired, (38 U.S.C. 1662, 1737, 1798; Pub. L. 95-202, 91 Stat. 1433)

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight, apprenticeship, or other on-job or Predischarge Education Program training, or

(2) Has defaulted on a previous education loan and there is a remaining unliquidated payment due the Veterans Administration. (38 U.S.C. 1798(c))

[44 FR 62507, Oct. 31, 1979, as amended at 45 FR 17996, Mar. 20, 1980]

§ 21.4502 Applications.

(a) *General.* An application for an education loan by an eligible veteran or other eligible person may not be submitted to the Veterans Administration prior to the date training is to commence. The application shall be made in the manner prescribed and upon the forms prescribed by the Veterans Administration. The application shall be certified by the school as to data required thereon from the school by the Veterans Administration.

(b) *Information.* The application shall provide the Veterans Administration with the following information and such other information as may be reasonable upon specific request:

(1) For loan periods beginning before August 1, 1978, a statement of the amount of the net income of the veteran or other eligible person, less the Federal income tax paid or payable thereon, as reported or expected

to be reported on the Federal income tax return of each such individual for the current tax year in which the application for the education loan is received by the Veterans Administration. For loan periods beginning after July 31, 1978, a statement of nontaxable income for the student for the current tax year in which the application for the education loan is received by the Veterans Administration; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(2) The amount of all funds of the veteran or other eligible person on hand on the date of the application including cash on hand, money in a bank or savings and loan association account, and certificates of deposit.

(3) The full amount of the tuition for the course to be paid by the veteran or other eligible person during the period for which the loan is sought.

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount not to exceed 12 cents per mile for commuting normal distances to classes if the student does not reside on campus. Applications for loans covering loan periods which begin after July 31, 1978 may also provide the Veterans Administration with a statement of the amount of charges for room and board which the school would have made to the veteran or eligible person had the school provided the veteran or eligible person room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of the charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the State college or State university which provides room and board.

(5) The anticipated reasonable cost of books and supplies required for the courses to be taken during the period for which the loan is sought.

(c) *Assignment.* At the time of application the veteran, spouse or surviving spouse shall assign to the Veterans Administration (for deposit in the Veterans' Administration Education Loan Fund established under 38 U.S.C. 1799) the amount of any accelerated payment of educational assistance allowance to which he or she may become entitled, including any matching contributions of a State or local government unit made pursuant to 38 U.S.C. 1682A(b)(8), in connection with the school term for which the loan is granted. (38 U.S.C. 1798(f); Pub. L. 95-202, 91 Stat. 1433)

[40 FR 31764, July 29, 1975, as amended at 44 FR 62507, Oct. 31, 1979]

§ 21.4503 Determination of loan amount.

(a) *General.* The amount of the education loan shall be computed by:

(1) Determining the total amount of financial resources of the veteran or other eligible person, as defined in § 21.4500(e), which may be reasonably expected to be expended for education needs in any academic year or other loan period.

(2) Subtracting the available resources determined in paragraph (a)(1) of this section from the actual cost of attendance, as defined in § 21.4500(f), to obtain the net amount by which costs exceed the resources available for education needs. If the available resources and the costs are equal, or if the resources exceed the costs, no loan will be authorized.

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources of \$50 or less no loan shall be granted.

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying \$311 times the number of months of educational assistance allowance to which the veteran or other

eligible person is entitled or would be entitled were it not for the expiration of his or her delimiting period under section 1661 or subchapter II of chapter 35, title 38, U.S.C., on the date that training commences during the period for which the loan is sought, but in no event more than \$2,500 in any one academic year. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than the academic year plus the summer term, quarter or semester at least 8 weeks in length or for a period which begins after July 31, 1978 that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than 12 months or for a period which begins after July 31, 1978 that is longer than 6 months. (38 U.S.C. 1798)

(4) The following maximum amounts shall be paid on the loan at the beginning of the term:

(i) \$2,500 for an academic year which begins before August 1, 1978.

(ii) \$3,330 for an academic year and following summer term which begin before August 1, 1978.

(iii) \$1,660 for a quarter and following summer term which begin before August 1, 1978.

(iv) \$2,080 for a semester and following summer term which begin before August 1, 1978.

(v) \$1,250 for any semester.

(vi) \$830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) \$1,660 for two consecutive quarters which begin after July 31, 1978.

(viii) \$270 per month of enrollment for a course not leading to a standard college degree if less than 6 months in length.

(ix) \$1,660 for a course not leading to a standard college degree 6 through 8 months in length provided the loan period begins before August 1, 1978.

(x) \$1,660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xi) \$270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xii) \$2,500 for a course not leading to a standard college degree 9 through 11 months in length provided that the loan period begins before August 1, 1978.

(xiii) \$3,330 for a course not leading to a standard college degree 12 months in length provided that the loan period begins before August 1, 1978. (38 U.S.C. 1798(b); Pub. L. 95-202, 91 Stat. 1433)

(5) No amount authorized will be paid by the Veterans Administration until the veteran or other eligible person is certified as being enrolled and actually pursuing the course.

(6) An eligible veteran or other eligible person may receive more than one loan covering separate loan periods subject to paragraphs (b) (3) and (7) of this section.

(7) If the veteran or other eligible person has a material change in economic circumstances subsequent to the original application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Veterans Administration will not decrease or revoke a loan once granted, absent fraud in the application.

[40 FR 31765, July 29, 1975, as amended at 43 FR 35308, Aug. 9, 1978; 44 FR 62508, Oct. 31, 1979]

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, U.S.C., to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

(1) The full amount of the loan.

(2) Agreement to pay a fee not to exceed 3 percent for an insurance fund against defaults.

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

(i) For loans of \$600 or more, 10 years and 9 months after such date, or

(ii) For loans of less than \$600, 1 year and 7 months after such date for the first \$50 of the loan plus 1 additional month for each additional \$5 of the loan. (38 U.S.C. 1798, Pub. L. 95-476; 92 Stat. 1497)

(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower. (38 U.S.C. 1798)

(b) *Interest.* The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Commissioner of Education, Department of Health, Education, and Welfare, under part B of title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount. (38 U.S.C. 1798; Pub. L. 94-502, 90 Stat. 2383)

(c) *Security.* The loan shall be made without security and without endorsement.

(d) *Default.* Whenever the Veterans Administration determines that a default, in whole or in part, has occurred on any such loan the eligible veteran or other eligible person shall be notified that the amount of the default shall be recovered from the eligible veteran or other eligible person concerned in the same manner as any other debt due the United States.

(e) *Death or disability.* If the eligible veteran or eligible person dies or becomes permanently and totally disabled, even though he or she ceases to be permanently and totally disabled subsequent to the granting of the loan, the remaining liability of such person for an educational loan shall be discharged.

(f) *Fraud.* Material misrepresentation of fact by the eligible veteran or

eligible person, including omissions of relevant information, shall render the loan agreement null and void. The deferred payment provisions of the agreement shall not apply in such a case and the full amount of any loan balance shall become due and payable immediately. The amount due shall be recovered from the eligible veteran or eligible person in the same manner as any other debt due the United States.

(g) *Signature.* A veteran or eligible person may sign both the loan application and the promissory note required and payment of the amounts authorized will be made to such person, notwithstanding his or her minority, unless the person has a legal guardian. In such cases the legal guardian must sign and will be paid the loan amounts.

[40 FR 31765, July 29, 1975, as amended at 43 FR 35309, Aug. 9, 1978; 44 FR 62508, Oct. 31, 1979; 45 FR 17996, Mar. 20, 1980]

§ 21.4505 Check delivery.

(a) *General.* Education loans by the Veterans Administration shall be made by a check payable to the veteran or eligible person and shall be mailed promptly to the educational institution in which the veteran or eligible person is enrolled for delivery by the educational institution.

(b) *Delivery and certification.* (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the veteran or eligible person and shall certify the fact of delivery to the Veterans Administration immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Veterans Administration.

(2) The Director of the Veterans Administration field station of jurisdiction may direct that education loan checks be sent directly to veterans and other eligible persons when:

(i) The educational institution demonstrates an inability to comply with these requirements; or

(ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the de-

livery to the student or return to the Veterans Administration; or

(iii) The educational institution elects not to participate in this program; or

(iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program. (38 U.S.C. 1798; Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62508, Oct. 31, 1979]

§ 21.4506 Education loan forgiveness through accelerated payment of educational assistance allowance.

(a) *General.* A veteran or eligible person may qualify for a reduction in the amount of an outstanding education loan obligation. The reduction will consist of an amount representing an offset against the veteran's or eligible person's entitlement and an equal matching amount paid by a State and/or local governmental unit. The offset against the veteran's or eligible person's entitlement is considered to be an accelerated payment of educational assistance allowance. If the veteran or eligible person received a loan for more than one school term, he or she may receive accelerated payment of educational assistance allowance for each.

(b) *Eligibility.* The veteran or eligible person shall be eligible for an accelerated payment of educational assistance allowance for any school term as defined in § 21.4500(i), when all of the following conditions are met:

(1) The veteran or eligible person:

(i) Was enrolled as a full-time student throughout the school term for which the particular education loan was granted, or

(ii) Was enrolled as a full-time student throughout one semester which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted, or

(iii) Was enrolled as a full-time student throughout two consecutive quarters which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted.

(2) The veteran or eligible person was entitled to an educational assistance allowance under either chapter 34 or chapter 35 during the school

term for which the education loan was granted. This requirement will be met even though some or all payments may have been withheld.

(3) The student received an education loan from the Veterans Administration after January 1, 1978.

(4) The combined amount of tuition and fees of the educational institution in which the veteran or eligible person was enrolled:

(i) Exceeded \$700 for the school term for which the education loan was granted;

(ii) Exceeded \$450 for two consecutive quarters beginning after January 1, 1978 and ending August 1, 1978 for which the education loan was granted;

(iii) Exceeded \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which the education loan was granted.

(5) The educational institution in which the veteran or eligible person completed the program of education he or she was pursuing during the term for which he or she received the education loan certifies to the Veterans Administration that:

(i) The veteran or eligible person has satisfactorily completed that program of education and attained the predetermined and identified educational, professional, or vocational objective which the veteran or eligible person had been pursuing during the term he or she received the education loan, and

(ii) The educational institution has awarded the veteran or eligible person the appropriate educational degree, diploma or certificate signifying such attainment.

(6) The veteran or eligible person applies timely for accelerated payment as described in paragraph (c) of this section.

(7) The educational institution in which the veteran or eligible person was enrolled has certified that not more than 35 percent of the total number of students enrolled in the same school term as the one for which the veteran or eligible person received the education loan were receiving educational assistance from the Veterans Administration. This requirement must be met for each semester or quarter within the school term.

(8) A State or local governmental unit has made a matching payment to the Veterans Administration Education Loan Fund pursuant to a program meeting the criteria of paragraph (d) of this section.

(c) *Time limits.* An accelerated payment of educational assistance may be made only if a formal claim for it is received by the Veterans Administration within 180 days of the later of the following two dates:

(1) The date on which the degree, diploma, or certificate described in paragraph (b)(5) of this section was awarded, or

(2) The date on which the State or local governmental unit or jurisdiction established a program as required in paragraph (d) of this section. If more than one such matching payment program is established which may apply to the veteran or eligible person, accelerated payment will be based only on those programs for which a timely application was received.

(d) *State or local participation.* A State or local governmental unit electing to participate in the accelerated payment program must establish a program to do so. Such a program:

(1) Must be established prior to January 1, 1983.

(2) Must pertain only to veterans and eligible persons who received the education loan while enrolled in an educational institution located within the State or area of local governmental jurisdiction that is establishing the program.

(3) Must provide for payments on behalf of the veteran or eligible person to be made to the Veterans Administration for deposit in the Veterans Administration Education Loan Fund. Such payments may match the maximum accelerated payment as computed in paragraph (e) of this section or a lesser amount.

(4) May be limited to veterans and eligible persons who are bona fide residents of the State or local governmental unit establishing the program.

(e) *Computation of accelerated payment.* The amount of accelerated payment for a term shall equal whichever of the following amounts is the least:

(1) The amount equal to the educational assistance allowance actually

awarded to the veteran or the eligible person for the school term for which the educational loan was granted;

(2) An amount equal to 33% percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$700 for the school term for which the educational loan was granted;

(3) An amount equal to 33% percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds \$450 for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted;

(4) An amount equal to 33% percent of the amount by which tuition and fees charged to the veteran or eligible person exceeds \$350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted.

(5) An amount equal to 33% percent of the amount by which the outstanding education loan obligation (principal only) for a school term exceeded \$700 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(6) An amount equal to 33% percent of the amount by which the outstanding education loan obligation (principal only) for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$450 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(7) An amount equal to 33% percent of the amount by which the outstanding education loan obligation (principal only) for one semester beginning after January 1, 1978 and ending before August 1, 1978 exceeded \$350 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(8) The amount which the State and/or local governmental unit concerned pays to the Veterans Administration to match the accelerated payment;

(9) An amount equal to the number of months (and fractional months) of

remaining entitlement multiplied by the full-time rate (with dependents) in effect for the last month of the program within the delimiting period. (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

(f) *Entitlement charges.* Charges against the period of entitlement of a veteran or eligible person who receives an accelerated payment shall be made as stated in § 21.1045(h). (38 U.S.C. 1682A, 1738; Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62508, Oct. 31, 1979]

§ 21.4507 Advertising.

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Veterans Administration for eligible persons, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows: "Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of \$2,500 per academic year from the Veterans Administration depending upon need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it." (38 U.S.C. 1796, 1798(b); Pub. L. 95-202, 91 Stat. 1433)

[44 FR 62510, Oct. 31, 1979]

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

AUTHORITY: 38 U.S.C. 210(c), unless otherwise noted.

SOURCE: 45 FR 31, Jan. 2, 1980, unless otherwise noted.

ADMINISTRATIVE

§ 21.5001 Administration of benefits program; chapter 32.

In administering benefits payable under chapter 32, title 38, United States Code, the Veterans Administration will apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4001—Delegations of authority.

(b) Section 21.4002—Finality of decisions.

(c) Section 21.4003—Revision of decisions.

(d) Section 21.4005—Conflicting interests.

(e) Section 21.4006—False or misleading statements.

(f) Section 21.4007—Forfeiture.

(g) Section 21.4008—Prevention of overpayments.

(h) Section 21.4009—Overpayments; waiver or recovery. (38 U.S.C. 1641)

GENERAL

§ 21.5020 Post-Vietnam era veterans' educational assistance.

Title 38 U.S.C. chapter 32, effective January 1, 1977, provides for a participatory program for educational assistance benefits to eligible veterans and servicepersons. The intent of Congress is that this program shall—

(a) Provide educational assistance to men and women who enter the Armed Forces after December 31, 1976;

(b) Assist these men and women to obtain an education they might not otherwise be able to afford; and

(c) Promote and assist the all volunteer military program of the United States by attracting qualified persons to the Armed Forces. (38 U.S.C. 1601)

§ 21.5021 Definitions.

For the purpose of Subpart G and payment of chapter 32 benefits the following definitions apply:

(a) "Veteran"—means anyone whose service meets the requirements of § 21.5040. (38 U.S.C. 1602(1))

(b) "Active duty"—means full-time duty in the Armed Forces or as a commissioned officer of the regular or Reserve Corps of the Public Health Service or of the National Oceanic and Atmospheric Administration. It does not include any period during which an individual:

(1) Was assigned full-time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,

(2) Served as a cadet or midshipman at one of the service academies,

(3) Served under the provisions of section 511(d) of title 10, United States Code, pursuant to an enlistment in the military reserve or national guard,

(4) Served in an excess leave without pay status, or

(5) Served in a status specified in § 3.15 of this chapter. (38 U.S.C. 1602)

(c) "State"—means each of the several States, territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Canal Zone. (38 U.S.C. 101)

(d) "School," "educational institution," "institution"—means the same as defined for chapter 34 benefits in § 21.4200(a)(1). (38 U.S.C. 1602; 1652)

(e) "Participant"—means a person who is participating in the educational benefits program established under chapter 32. This includes;

(1) A person who has enrolled in and is making contributions by monthly payroll deduction to the "fund".

(2) Those individuals who have contributed to the "fund" and have not disenrolled (i.e., users or potential users of benefits). (38 U.S.C. 1602)

(f) "Fund"—means that trust fund account established to maintain dollar contributions of the participant (and contributions, if any, from the Department of Defense). (38 U.S.C. 1622)

(g) "Suspends"—means a participant stops contributing to the "fund" (temporarily or permanently). (38 U.S.C. 1621)

(h) "Disenrolls"—means a participant terminates participation and forfeits any entitlement to benefits except for a refund of his or her contributions previously made. (38 U.S.C. 1621)

(i) "Hardship" or "other good reasons"—means circumstances considered to be such by the Department of Defense and the Veterans Administration when referring to suspension or disenrollments, such as illness of the participant or a member of his or her immediate family, unexpected personal expense, etc. (38 U.S.C. 1621(b))

(j) "Benefit period" means—

(1) For a course leading to a standard college degree—

(i) The entire enrollment period certified by the school; or

(ii) That period of time from the beginning of an enrollment period until the end of the individual's delimiting period; or

(iii) That period of time from the beginning of an enrollment period to the date on which the individual's contributions in the fund are exhausted, whichever is the shortest.

(2) For a residence course not leading to a standard college degree or for a correspondence course that period of time from the beginning of the enrollment period as certified by the school or the date the school last certified on the quarterly certification of attendance, whichever is later, to—

(i) The end of the enrollment period;

(ii) The end of the quarter to be certified;

(iii) The last date of the individual's delimiting period; or

(iv) The date on which the individual's contributions to the fund are exhausted, whichever occurs first.

(3) For flight training courses that period of time from the beginning of the enrollment period or the date the flight school last certified on the monthly certification of flight training to—

(i) The end of the month to be certified;

(ii) The last date of the individual's delimiting period; or

(iii) The date on which the individual's contributions to the fund are exhausted, whichever occurs first. (38 U.S.C. 1631)

(k) "Benefit payment"—means all educational assistance allowance paid to a veteran for pursuit of a program of education during a benefit period. (38 U.S.C. 1631)

§ 21.5022 Eligibility under more than one program.

An individual eligible to receive educational assistance under 38 U.S.C. chapter 32, and provisions of Subpart G is not eligible to receive educational assistance allowance under 38 U.S.C. chapter 34. If otherwise eligible, an individual may receive vocational rehabilitation training under 38 U.S.C. chapter 31, and/or educational assistance under 38 U.S.C. chapter 35, but not concurrently with benefits under

chapter 32. The 48-month limitation on benefits under more than one program does not apply to benefits under chapter 32. (38 U.S.C. 1621)

§ 21.5023 Nonduplication; Federal programs.

An individual may not receive educational assistance allowance under 38 U.S.C. chapter 32, if the individual is—

(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health, Education, and Welfare in the case of the Public Health Service), or

(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act and whose full salary is being paid to him or her while so training. (38 U.S.C. 1641, 1781)

CLAIMS AND APPLICATIONS

§ 21.5030 Applications, claims, informal claims, and time limits.

(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.

(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.

(c) The provisions of the following sections shall apply to claims for educational assistance allowances or loans under 38 U.S.C. chapter 32 in the same manner as the Veterans Administration applies them for the administration of chapters 34 and 36:

- (1) Section 21.1030—Claims.
 - (2) Section 21.1031—Informal claims.
 - (3) Section 21.1032—Time limits.
- (38 U.S.C. 1641, 1671)

ELIGIBILITY

§ 21.5040 Basic eligibility.

(a) *Individuals not on active duty.*

(1) To establish basic eligibility under 38 U.S.C. Chapter 32 for educational assistance, an individual not on active duty—

(i) Must have initially entered the military service after December 31, 1976;

(ii) Must have served on active duty for 181 or more continuous days after December 31, 1976, or if less than 181 days were served on active duty, the individual must have been discharged or released from active duty for a service-connected disability; and

(iii) Must have received an unconditional discharge or release under conditions other than dishonorable from the initial period of military service and from any other period of service upon which eligibility is based.

(2) The Veterans Administration will consider that the veteran has an unconditional discharge or release if—

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable. (38 U.S.C. 1602)

(b) *Individuals on active duty.* To establish basic eligibility under 38 U.S.C. chapter 32 for educational assistance an individual on active duty—

(1) Must have initially entered into military service after December 31, 1976,

(2) Must have served on active duty for a period of 181 or more continuous days after December 31, 1976, and

(3) If not enrolled in a Predischarge Education Program, must have completed the lesser of the following two periods of active duty:

(i) The individual's first obligated period of active duty which began after December 31, 1976, or

(ii) The individual's period of active duty which began after December 31, 1976, and which is 6 years in length,

(4) If enrolled in a Predischarge Education Program, the individual—

(i) Must be an enlisted member of the Armed Forces,

(ii) Must be a participant, and

(iii) Must be training during the last 6 months of his or her first period of active duty which began after Decem-

ber 31, 1976. (38 U.S.C. 1631(b)) See § 21.5233.

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 59247, Dec. 4, 1981]

§ 21.5041 Periods of entitlement.

(a) No educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after his or her last discharge or release from active duty. (38 U.S.C. 1632)

(b) The individual—

(1) May use his or her entitlement at any time during the 10-year period after the last discharge or release from active duty;

(2) Is not required to use his or her entitlement in consecutive months. (38 U.S.C. 1632)

PARTICIPATION

§ 21.5050 Application requirements for participation.

(a) An individual, who is otherwise eligible to become a participant, must apply to the Service Department under which he or she serves upon forms prescribed by the Service Department and/or Secretary of Defense.

(b) No application to participate may be made before entry upon active duty.

(c) Each application must be submitted in time to permit the Service Department to make the required deduction from the individual's military pay for at least 1 month before the applicant's discharge or release from active duty. (38 U.S.C. 1621)

§ 21.5052 Contribution requirements.

(a) *Minimum period of participation.* Each individual who agrees to participate must do so for a minimum period of 12 consecutive months, unless the participant—

(1) Is allowed to disenroll for hardship reasons;

(2) Is permitted to suspend participation for hardship reasons;

(3) Is discharged or released from active duty; or

(4) Otherwise ceases to be legally eligible to participate. (38 U.S.C. 1621)

(b) *Amount of monthly contribution.* The individual shall specify the

amount of his or her contribution to the fund.

(1) The contribution shall be at least \$50 per month but not more than \$75 per month.

(2) The contribution shall be evenly divisible by five. (38 U.S.C. 1622)

(c) *Amount of total contribution.* An individual may contribute for the number of months required to reach a total contribution of \$2,700. (38 U.S.C. 1622)

(d) *Changing the monthly contribution.* An individual may increase or decrease the amount of the monthly contribution, but may not do so more than once a month. (38 U.S.C. 1622)

(e) *Prohibition against contributing.* An individual may not make contributions to the fund after the date of his or her discharge. (38 U.S.C. 1622)

§ 21.5054 Dates of participation.

An individual may participate after December 31, 1976, but may not enroll to participate after December 31, 1981, unless the program is extended as provided in section 408, Pub. L. 94-502 (90 Stat. 2398). An individual may not receive benefits before July 1, 1977 unless discharged after January 1, 1977, for a service-connected condition. The first date on which an individual enrolled in a PredischARGE Education Program may receive benefits is subject to the eligibility requirements of § 21.5040(b)(4). (38 U.S.C. 1631 (a), (b))

§ 21.5058 Resumption of participation.

(a) An eligible individual, who remains otherwise eligible, may resume active contribution to the fund, if he or she has—

(1) Voluntarily elected to suspend following completion of minimum participation;

(2) Suspended at any time for reasons of hardship; or

(3) Received a discharge or release from active duty after participation and reenlisted. (38 U.S.C. 1621)

(b) A person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(c) If a person does reenroll, he or she may not "repurchase" entitlement

by tendering previously refunded contributions which he or she received upon disenrollment. (38 U.S.C. 1621)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 29474, June 2, 1981]

§ 21.5060 Disenrollment.

(a) *Voluntary disenrollment.* An individual may elect to disenroll at any time within the initial 12 months of participation for reasons of personal hardship. An individual may disenroll at any time after the initial 12 months of participation. (38 U.S.C. 1621)

(b) *Nonvoluntary disenrollment.* The Veterans Administration shall disenroll automatically an individual who meets any of the following sets of conditions:

(1) The individual is discharged or released from his or her initial obligated period of active service and—

(i) The discharge or release is under dishonorable conditions, or

(ii) A statutory bar to benefits administered by the Veterans Administration exists for the individual;

(2) The individual participated only after completion of the initial or subsequent period of active service; is discharged or released and—

(i) The discharge or release is under dishonorable conditions, or

(ii) A statutory bar to benefits exists for the individual; or

(3) The individual has not utilized all of his or her entitlement to benefits within the 10-year period stated in § 21.5041. (38 U.S.C. 101, 1625, 1632)

Cross Reference: Refunds without disenrollment. See § 21.5065.

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 59247, Dec. 4, 1981]

§ 21.5062 Date of disenrollment.

An individual will be disenrolled effective—

(a) The date the Veterans Administration or the Service Department determines he or she has ceased to be legally entitled to participate; or

(b) The date the individual's request for voluntary disenrollment is received by the Veterans Administration, whichever is earlier. (38 U.S.C. 1621(d))

§ 21.5064 Refund upon disenrollment.

(a) *General.* A disenrolled individual will be refunded all contributions made by him or her to the fund. He or she will be ineligible to receive benefits under §§ 21.5130 and 21.5138, unless the individual reenrolls as a participant and agrees to participate in a new period of 12 consecutive months as provided in § 21.5058. The amount of the contributions refunded upon disenrollment shall be limited to the amount of his or her contributions not utilized to receive benefits as of the date of disenrollment, less any outstanding debts resulting from overpayments of educational assistance allowance. (38 U.S.C. 1623)

(b) *Effective date of refund.* The date upon which the refund of contributions, if any, will be made shall be determined as follows:

(1) If an individual voluntarily disenrolls from the program before discharge or release from active duty, the individual's contributions remaining in the fund will be refunded on—

(i) The date of the participant's discharge or release from active duty; or

(ii) Within 60 days of the receipt of notice by the Veterans Administration of the individual's discharge or disenrollment; or

(iii) Any earlier date in instances of hardship or for other good reasons.

(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty, under other than dishonorable conditions, the individual's contributions shall be refunded within 60 days of receipt by the Veterans Administration of an application for a refund from the individual.

(3) If an individual is disenrolled because he or she is discharged or released from active duty under dishonorable conditions, the individual's contributions remaining in the fund shall be refunded:

(i) On the date of the individual's discharge or release from active duty; or

(ii) Within 60 days of receipt of notice by the Veterans Administration of the individual's discharge or release, whichever is the later.

(4) If an individual is disenrolled because he or she has not utilized all of his or her entitlement to benefits within the 10-year delimiting period, the individual's contributions remaining in the fund shall be refunded.

(i) The Veterans Administration shall notify the individual that the delimiting period has expired and shall state the amount of unused contributions.

(ii) The Veterans Administration shall make the refund only if the individual requests it.

(iii) If no request is received by the Veterans Administration within 1 year from the date that the individual is notified of his or her entitlement to a refund, it will be presumed that the individual's whereabouts is unknown. The funds on deposit for that individual will be transferred in accordance with the provisions of section 725s, title 31, United States Code. (38 U.S.C. 1623, 1632)

§ 21.5065 Refunds without disenrollment.

(a) *Refunds made without disenrollment.* If an individual who would have been eligible, but for the fact of his or her re-enlistment, for the award receives a discharge or release under dishonorable conditions, the Veterans Administration may refund a portion of his or her contribution. (38 U.S.C. 101, 1623)

(b) *Amount of refund.* The Veterans Administration shall refund to the individual all of his or her contributions made to the fund after the individual completed the obligated period of service. (38 U.S.C. 101, 1623)

(c) *Date of refund.* The Veterans Administration shall refund all monies due the individual—

(1) On the date of the individual's discharge or release from active duty; or

(2) Within 60 days of receipt of notice by the Veterans Administration of the individual's discharge or release, whichever is later. (38 U.S.C. 101, 1623, 1632)

[46 FR 59247, Dec. 4, 1981]

§ 21.5066 Suspension of participation.

An individual may suspend participation in the program without disenrolling. If the individual suspends par-

ticipation, he or she may resume participation at any time thereafter while on active duty.

(a) An individual may suspend participation any time after 12 months of participation.

(b) An individual who has participated for less than 12 consecutive months may not suspend unless the Secretary of Defense determines that the reason for the suspension is due to a personal hardship. (38 U.S.C. 1621)

§ 21.5067 Death of participant.

If an individual dies, the Veterans Administration shall pay the amount of his or her unused contributions to the fund—

(a) To the beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance policy; or

(b) To the individual's estate if no beneficiary has been designated under the individual's Servicemen's Group Life Insurance policy or if the individual has no such policy. (38 U.S.C. 1624)

ENTITLEMENT

§ 21.5070 Entitlement.

A participant is entitled to a monthly benefit for periods of time during which the individual is enrolled in, and satisfactorily pursuing, an approved program of education. The amount of the benefit will vary from individual to individual and, in some instances, from month to month as provided in § 21.5138. (38 U.S.C. 1631)

§ 21.5071 Months of entitlement allowed.

The Veterans Administration will credit an individual with 1 month of entitlement for each month he or she contributes to the fund up to a maximum of 36 months or its equivalent in part-time training. (38 U.S.C. 1631)

§ 21.5072 Entitlement charge.

The Veterans Administration shall determine the entitlement charge for each payment in the same manner for all individuals regardless or whether they are on active duty.

(a) *Residence training.* (1) A charge against the period of entitlement for a

program other than a Predischarge Education Program or one consisting exclusively of flight training will be made as follows:

(i) The Veterans Administration will charge an individual who is a full-time student 1 month's entitlement for each monthly benefit paid to him or her.

(ii) The Veterans Administration will charge an individual who is other than a full-time student 1 month's entitlement for each sum of money paid equivalent to what the individual would have been paid had he or she been a full-time student for 1 month.

(2) When the computation results in a period of time other than a full month, the entitlement charge will be prorated. (38 U.S.C. 1631)

(b) *Predischarge Education Program.* No entitlement charge will be made. (38 U.S.C. 1641, 1696)

(c) *Flight and correspondence training courses.* (1) A charge against the period of entitlement for a program consisting exclusively of flight training or correspondence training will be made on the basis of 1 month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(2)(viii), which is paid to the individual as an educational assistance allowance for this training. When computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at by applying the formula is determined to be \$150 at the time that a benefit payment for flight or correspondence training is computed, the individual will be charged 1 month of entitlement for each \$150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment. (38 U.S.C. 1631(c))

§ 21.5074 Excessive absences.

The maximum number of absences allowed an individual enrolled in a course or courses not leading to a standard college degree shall be as stated in § 21.4205(b). As stated in § 21.4136(e), no payment will be made for absences which exceed the maximum. The Veterans Administration shall make no charge against the entitlement of an individual for the combined portion of a month for which the Veterans Administration makes absence deductions. (38 U.S.C. 1641, 1780)

§ 21.5076 Entitlement charge; overpayment cases.

(a) The Veterans Administration will make a charge against an individual's entitlement for an overpayment of educational assistance allowance only if—

(1) The overpayment is discharged in bankruptcy; or

(2) The Veterans Administration waives the overpayment and does not recover it. (38 U.S.C. 1631)

(b) The entitlement charge will be at the appropriate rate for the elapsed period covered by the overpayment. (38 U.S.C. 1631)

§ 21.5078 Interruption to conserve entitlement.

(a) *Interruption to conserve entitlement generally prohibited.* No one may interrupt a certified period of enrollment for the purpose of conserving entitlement. A school may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the individual actually is enrolled and is pursuing his or her program of education for the entire term, quarter or semester. (38 U.S.C. 1641, 1780)

(b) *Exceptions.* The Veterans Administration will charge entitlement for the entire period of enrollment certified if the individual otherwise is eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment actually is terminated.

(2) Enrollment is canceled and the individual has not negotiated an edu-

cational benefits check for any part of the certified period of enrollment.

(3) The individual—

(i) Interrupts his or her enrollment at the scheduled end of any term, quarter, semester or school year within the certified period of enrollment; and

(ii) Has not negotiated any check for educational benefits for the succeeding term, quarter, semester or school year.

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive order of the President or due to an emergency situation. This exception applies whether or not the individual has negotiated a check for educational benefits for the certified period. (38 U.S.C. 1641, 1780)

COUNSELING

§ 21.5100 Counseling.

(a) *Purpose.* The purpose of counseling is—

(1) To assist in selecting an objective;

(2) To develop a suitable program of education or training; and

(3) To resolve any personal problems which are likely to interfere with the successful pursuit of a program. (38 U.S.C. 1641)

(b) *Required counseling.* (1) Counseling is required—

(i) For any change of program if the program was interrupted or discontinued because of the individual's own misconduct, neglect or lack of application, or

(ii) For reentrance into training whether it is into the same or a different program, if training was discontinued because of unsatisfactory conduct or progress under § 21.4277, or

(iii) When necessary to determine if a second or subsequent change of program may be approved.

(2) When counseling is required and an individual fails to report or fails to cooperate in the counseling process, further action on the application will not be taken. (38 U.S.C. 1641, 1791)

(c) *Limits on counseling.* Counseling may not be given—

(1) For an initial course selected; or

(2) For a first change from that course when conduct and progress is satisfactory. (38 U.S.C. 1641, 1791)

§ 21.5101 Approval of program changes and reentrances.

(a) *General.* An individual may not receive educational assistance for training following a second or subsequent change in program or following discontinuance for unsatisfactory conduct or progress unless such a change or reentrance into training has been approved by a Veterans Administration counseling psychologist.

(b) *Conditions for approval.* A counseling psychologist will recommend approval of subsequent change of program or reentrance into the same program if he or she finds that—

(1) The program is suitable to the individual's aptitudes, interests, and abilities; and

(2) If there was unsatisfactory progress or conduct, the cause for that unsatisfactory progress or conduct has been removed, and there exists a reasonable likelihood that there will not be a recurrence of such an interruption or failure to progress. For third and subsequent changes the requirements of §§ 21.4234 and 21.5232, must also be met. (38 U.S.C. 1641, 1791)

§ 21.5103 Travel expenses.

(a) *Travel for individuals.* The Veterans Administration shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(1) The Veterans Administration determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(2) The individual has a service-connected disability.

(b) *Travel for attendants.* The Veterans Administration will authorize payment of travel expenses for an attendant while the individual is traveling when—

(1) The individual, because of a severe disability, requires the services of an attendant while traveling, and

(2) The Veterans Administration is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section. (38 U.S.C. 111)

CROSS REFERENCE: Authorization for travel of attendants. See § 21.274.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

§ 21.5130 Payments; educational assistance allowance.

In administering benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration will apply the following sections in the same manner as they are applied in the administration of chapters 34 and 36.

(a) Section 21.4131 (except paragraphs (c)(3) and (e) of this section)—Commencing dates.

(b) Section 21.4132—Waiver of time limits.

(c) Section 21.4134—Suspension and discontinuance.

(d) Section 21.4135 (except paragraphs (b), (c), (d), (o), and (v) of this section)—Discontinuance dates.

(e) Section 21.4138 (except paragraphs (a), (b), and (c))—Certifications and release of payments. (38 U.S.C. 1641)

(f) Section 21.4139—(except paragraph (b) of this section)—Payee.

(g) Section 21.4146—Assignments of benefits prohibited. (38 U.S.C. 1641)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981]

§ 21.5131 Educational assistance allowance.

The Veterans Administration will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 while the individual is pursuing a course of education. The Veterans Administration may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account. (38 U.S.C. 1641)

(a) *Commencing date.* The commencing date will be the date of the individual's entrance or reentrance under § 21.4131 (38 U.S.C. 1641)

(b) *Ending date.* The ending date will be the earliest of the following dates:

(1) The ending date of the individual's course or period of enrollment as certified by the school;

(2) The ending date of the individual's eligibility as determined under § 21.5041;

(3) The ending date specified in § 21.4135. (38 U.S.C. 1641)

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except flight and correspondence training depends on whether the Veterans Administration determines that the individual is a full-time student, three-quarter time student, half-time student or one-quarter time student.

(b) *Contributions.* The amount of benefit payment to an individual (except one in the Predischarge Education Program) also depends on—

(1) The amount the individual has contributed to the fund.

(2) The amount the Veterans Administration has contributed to the fund for the individual. This is twice the individual's contribution.

(3) The amount, if any, the Secretary of Defense has contributed to the fund for the individual. (38 U.S.C. 1631)

§ 21.5134 Restrictions on paying benefits to servicepersons.

The Veterans Administration may not pay benefits to a serviceperson (other than one in the Predischarge Education Program) unless he or she—

(a) Has completed 3 months of contributions to the fund; and

(b) Is serving on active duty in an enlistment period subsequent to the initial period of active duty defined in § 21.5040(b)(3). (38 U.S.C. 1621, 1631)

§ 21.5135 Advance payments.

The Veterans Administration shall make advance payments of educational assistance allowance at the rates determined by § 21.5138 as provided by this section.

(a) *Eligibility.* An individual is eligible for an advance payment only if—

(1) The individual will be a student in residence training on a half-time or greater basis during the period for which the advance payment is made;

(2) The individual specifically requests an advance payment; and

(3) The educational institution at which the individual is accepted or enrolled agrees to, and can satisfactorily carry out, the provisions of 38 U.S.C. 1780(d)(5) (B) and (C) and (6), pertaining to—

(i) Receipt, delivery or return of advance checks, and

(ii) Certification of delivery and enrollment. (38 U.S.C. 1641, 1780(d))

(b) *Application.* The Veterans Administration will authorize an advance payment upon receipt of an application from an individual which in the case of an eligible serviceperson is endorsed by the educational institution. The application will contain a certification showing the following information:

(1) The individual is eligible for educational benefits;

(2) He or she has been accepted by the institution or is eligible to continue his or her training there;

(3) He or she has notified the institution of his or her intention to attend that institution;

(4) The number of credit, clock or Carnegie hours to be pursued by the individual; and

(5) The beginning and ending dates of the enrollment period. (38 U.S.C. 1641, 1780(d))

(c) *Secondary school certification.* In addition to the information required in paragraph (b) of this section, an enrollment certificate for an individual on active duty in a course, courses, or program of education leading to a secondary school diploma or an equivalent certificate shall specify—

(1) The program to be pursued is approved;

(2) The anticipated cost; and

(3) If the program to be pursued is other than a high school credit course, the need of the individual to pursue the course or courses. (38 U.S.C. 1641, 1780(d))

(d) *Amount of payment.* The amount of an advance payment shall not

exceed the allowance for the month or fraction of a month in which the course will begin plus the allowance for the following month. (38 U.S.C. 1641, 1780(d))

(e) *Method of payment.* The Veterans Administration shall make the advance payment check payable to the individual. The Veterans Administration shall mail the advance payment check to the individual's educational institution for delivery to the individual upon registration. The educational institution shall not deliver the advance payment check to the individual more than 30 days in advance of the commencement or resumption of his or her program. If the educational institution does not deliver the advance payment check to the individual within 30 days after he or she commences or resumes the program, the institution shall return the check to the Veterans Administration. (38 U.S.C. 1641, 1780(d))

(f) *Time of payment.* The Veterans Administration will authorize all advance payment only for—

(1) The beginning of an ordinary school year; or

(2) The beginning of any other enrollment period which begins after a break in enrollment of 1 full calendar month or longer. (38 U.S.C. 1641, 1780(d))

(g) *Effect of advance payment on subsequent payments.* The Veterans Administration shall make all other payments only at the end of the month in which the training for which payment is made shall have occurred. (38 U.S.C. 1641, 1780(d))

(h) *Limitations on making advance payments.* Notwithstanding any other provision of this section, the Director of the field station of jurisdiction may direct that no advance payment be made to an individual, if the Director determines that the educational institution he or she is attending—

(1) Demonstrates an inability to comply with the provisions of paragraph (e) of this section;

(2) Fails to provide adequately for the safekeeping of advance payment checks prior to delivery to the student or return to the Veterans Administration; or

(3) Demonstrates an inability to discharge its responsibilities under the advance payment program. (38 U.S.C. 1641, 1780(d))

[46 FR 32024, June 19, 1981]

§ 21.5136 Benefit payments; predischARGE education program.

(a) *Restrictions on payments.* The Veterans Administration may authorize up to 6 months of benefits to qualified individuals for PredischARGE Education Program training without charge to entitlement. Payments may be made only if—

(1) The individual has contributed to the fund for at least 1 month, and

(2) The training is received while the individual is serving the last 6 months of his or her first enlistment after December 31, 1976. (38 U.S.C. 1631)

(b) *Monthly rate.* The amount of payment to an individual pursuing a PredischARGE Education Program shall be the lesser of these rates:

(i) The cost of the course; or

(2) the following monthly rates:

(i) \$311 per month for full-time training.

(ii) \$233 per month for the three-quarter time training.

(iii) \$156 per month for half-time training.

(iv) \$78 per month for one-quarter training. (38 U.S.C. 1641, 1996)

(c) *Method of payment.* Payment shall be made in a lump sum for the term, quarter or semester at the beginning of the month in which training begins. (38 U.S.C. 1641, 1696)

(d) *Payment for similar training.* An individual may take similar training in subsequent enlistments, but it will not be considered PredischARGE Education Program training. Benefits for this similar training will be paid on the same basis as any other type of chapter 32 training with a charge to entitlement. (38 U.S.C. 1631)

§ 21.5138 Computation of benefit payments and monthly rates.

The Veterans Administration will compute all monthly rates and benefit payments.

(a) *Computation of entitlement factor.* In computing monthly rates and benefit payments the Veterans Administration in all cases except for

individuals in the PredischARGE Education Program, will compute an entitlement factor.

(1) For residence training the entitlement factor will be computed as follows:

- (i) Enter the number of full months in the applicable benefit period. (1).....
 - (ii) Enter the number of full days in excess of the number of full months. (a).....
 - (iii) Divide line a by 30. Enter the quotient. (2).....
 - (iv) Total (lines 1 and 2)..... (3).....
 - (v) Multiply line 3 by 1 for a full-time student; by .75 for a three-quarter time student; by .5 for a half-time student; or by .25 for a one-quarter time student. Enter the result. (4).....
- (This is the entitlement factor.)

(2) For flight training and correspondence training the entitlement factor will be computed as follows:

- (i) Enter the amount of the individual's contributions remaining in the fund. (b).....
 - (ii) Enter the individual's remaining months of entitlement. (c).....
 - (iii) Divide line b by line c. Enter the quotient.... (5).....
 - (iv) Enter two times the amount in line 5..... (6).....
 - (v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (d).....
 - (vi) Enter the individual's remaining months of entitlement. (e).....
 - (vii) Divide line d by line e. Enter the quotient... (7).....
 - (viii) Total (lines 5, 6 and 7)..... (8).....
 - (ix) Enter the correspondence or flight charges certified by the school. (9).....
 - (x) Divide line 9 by line 8. Enter the quotient.... (10).....
- (This is the entitlement factor.)

(38 U.S.C. 1631)

(b) *Computation of benefit payment.* The Veterans Administration will compute benefit payments for all training except the PredischARGE Education Program as follows:

- (1) Enter the entitlement factor. (f).....
- (2) Enter the amount of the individual's contributions remaining in the fund. (g).....
- (3) Multiply line f by line g. Enter the result. (h).....
- (4) Enter the remaining months of the individual's entitlement. (i).....
- (5) Divide line h by line i. Enter the quotient.... (11).....

(This is the individual's portion.)

(6) Enter two times the amount in line 11..... (12).....

(This is the Veterans Administration's portion.)

(7) Enter the amount of the (j).....

contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual.

(8) Multiply line f by line j. (k).....
Enter the result.

(9) Enter the individual's remaining months of entitlement. (l).....

(10) Divide line k by line l. (13).....
Enter the quotient.

(This is the Department of Defense's portion.)

(11) Total (add lines 11, (14).....
12 and 13).

(12) The benefit payment is either:

(i) The amount shown on line 14 or

(ii) The total amount of the remaining contributions in the fund made by the individual and the Veterans Administration and Secretary of Defense on behalf of the individual, whichever is less.

(38 U.S.C. 1631)

(c) *Monthly rates.* The Veterans Administration will compute the monthly rates of payment for individuals in residence training by repeating the calculations in paragraphs (b) (1) through (11) of this section except that instead of entering the entitlement factor on line f, paragraph (b)(1), the Veterans Administration will enter 1 for a full-time student, .75 for a three-quarter time student, .5 for a half-time student, or .25 for a one-quarter time student. (38 U.S.C. 1631)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981]

STATE APPROVING AGENCIES

§ 21.5150 State approving agencies.

In administering chapter 32, title 38, U.S.C., the Veterans Administration will apply the provisions of the following sections in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4150 (except paragraph (e) of this section)—Designation.

(b) Section 21.4151—Cooperation.

(c) Section 21.4152—Control by agencies of the United States.

(d) Section 21.4153—Reimbursement of expenses. (38 U.S.C. 1641, 1770, 1771, 1772, 1773, 1774)

SCHOOLS

§ 21.5200 Schools.

In the administration of benefits payable under the provisions of chapter 32, title 38, U.S.C., the Veterans Administration will apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4200 (except paragraph (c) of this section)—Definitions. (38 U.S.C. 1641)

(b) Section 21.4201—Restrictions on enrollment; percentage of students receiving financial support. (38 U.S.C. 1641, 1673(d))

(c) Section 21.4202—Overcharges; restrictions on enrollments. (38 U.S.C. 1641, 1790)

(d) Section 21.4203 (except paragraph (f)(3) of this section)—Reports by schools; requirements. (38 U.S.C. 1641, 1784)

(e) Section 21.4204 (except paragraph (e) of this section)—Periodic certifications. (38 U.S.C. 1641, 1784)

(f) Section 21.4205—Absences. (38 U.S.C. 1641, 1784)

(g) Section 21.4206—Reporting fee. (38 U.S.C. 1641, 1784)

(h) Section 21.4207—Failure of school to meet requirements. (38 U.S.C. 1641, 1790)

(i) Section 21.4208—Central Office Education and Training Review Panel. (38 U.S.C. 1641, 1790)

(j) Section 21.4209 (except so much of paragraph (c) of this section as relates to apprentice and other on-job training)—Examination of records. (38 U.S.C. 1641, 1790)

PROGRAMS OF EDUCATION

§ 21.5230 Programs of education.

In the administration of benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration will apply § 21.4230—Requirements (except paragraphs (c)(2), (d) and (e) of this section) in the same manner as it is applied in the administration of chapters 34 and 36. (38 U.S.C. 1641)

§ 21.5231 Combination.

In the administration of benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration will apply § 21.4233(b), (c), and (e) in the same manner as it is applied for the administration of chapters 34 and 36. (38 U.S.C. 1641)

§ 21.5232 Change of program.

In the administration of benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration will apply § 21.4234, except paragraphs (c) and (d), in the same manner as it is applied in the administration of chapters 34 and 36. (38 U.S.C. 1641)

§ 21.5233 Predischage education program (PREP); chapter 32.

(a) *General.* A Predischage Education Program is designed to encourage and assist servicepersons in preparing for their future education, training or vocation by providing them with an opportunity to enroll in and pursue a program of education or training prior to their discharge or release from active duty. (38 U.S.C. 1631, 1641, 1695(a))

(b) *Enrollment.* The Veterans Administration may approve the enrollment of an individual in a Predischage Education Program, regardless of the individual's previous educational experience, when the following conditions exist:

(1) The individual—

(i) Must be on active duty;

(ii) Must be a participant in the chapter 32 program;

(iii) Must meet the requirements for eligibility stated in § 21.5040; and

(iv) Must be an enlisted member of the Armed Forces.

(2) The individual is enrolled in—

(i) A course or courses (other than correspondence courses) which are required to receive a secondary school diploma; or

(ii) A course or courses (including individual unit subjects within a General Education Development (G.E.D.) examination program) which are required for or preparatory to, the pursuit of an approved, appropriate course or training program in an educational institution or training establishment. A program designed solely to

prepare an individual for a G.E.D. examination does not meet these requirements. (38 U.S.C. 1631, 1641, 1696)

(c) *Measurement.* Courses will be measured as provided in § 21.4270 et seq. (38 U.S.C. 1631, 1641, 1696)

(d) *Payment and entitlement charge.* Benefit payments are based on the cost of the individual's course. The payments may not exceed \$311 per month for full-time training. No charge will be made against the entitlement of the individual under chapter 32 for benefit payments under the Predischage Education Program. (38 U.S.C. 1631, 1641, 1696)

(e) *Cost determination.* (1) The Veterans Administration will compute the cost of the individual's course, which will form the basis for benefit payments—

(i) At the rate of the established charges for tuition and fees which the school requires other similarly circumstanced students enrolled in the same or a similar program to pay; and

(ii) The cost of the books and supplies for the course which the school requires other students in the same or a similar program to have.

(2) When the school offers no same or similar program, the Veterans Administration will establish the rates for tuition and fees on the basis of a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. The costs which the State approving agency may or may not include in the estimate are listed in paragraphs (f) through (o) of this section. (38 U.S.C. 1631, 1641, 1696)

(f) *Costs: administrative expenses.*

(1) The State approving agency may include reasonable administrative expenses in its cost estimate.

(2) The following administrative expenses are unreasonable and may not be included in the cost estimate:

(i) Administrative expenses at the home campus when clerical functions are performed at the branch facility (i.e. at the actual location of the Predischage Education Program);

(ii) Honorariums; and

(iii) Expenses due to a subcontractual arrangement not contemplated in

the course approval. (38 U.S.C. 1631, 1641, 1696)

(g) *Costs: consumable supplies.* The State approving agency may include reasonable costs for consumable supplies in its estimate. All consumable supplies included in the cost estimate must be described and supported in the State approving agency's report.

(h) *Costs: depreciation.* (1) The State approving agency may include reasonable costs for depreciation in its cost estimate.

(2) The following costs for depreciation are unreasonable and may not be included in the cost estimate:

(i) Depreciation for equipment purchased from Predischarge Education Program tuition prior to establishing rates by cost determination;

(ii) Depreciation which has been determined in a manner inconsistent with Internal Revenue Service principles for computing depreciation;

(iii) Depreciation for the exhaustion, wear, tear and obsolescence of property, which, at the end of the useful life of the depreciable property when taken together with the salvage value of the property, exceeds the cost or other basis of the property.

(iv) Depreciation which permits the school to recoup, within the first year, all or most of the costs of establishing the course, including the necessary equipment and program costs when no same course is offered. (38 U.S.C. 1631, 1641, 1696)

(i) *Costs: operation and maintenance.* The State approving agency may include in its cost estimate reasonable costs for operation and maintenance of the physical plant in which the Predischarge Education Program is offered. It may not include capital outlays for equipment and renovating buildings it has already determined to be adequate. (38 U.S.C. 1631, 1641, 1696)

(j) *Costs: rent or lease expenses.* The State approving agency may include in its cost estimate as rent or lease expenses only the reasonable cost of space used for instruction. (38 U.S.C. 1631, 1641, 1696)

(k) *Costs: taxes and insurance.* (1) The State approving agency may include in the cost estimate reasonable

costs for taxes and insurance. Reasonable costs include—

(i) The cost of social security for teachers and related personnel; and

(ii) Health insurance costs for teachers and related personnel.

(2) The following costs are unreasonable. They may not be included in the cost estimate:

(i) Income taxes, and

(ii) Personal life insurance. (38 U.S.C. 1631, 1641, 1696)

(l) *Costs: teaching and related Personnel.* (1) the State approving agency may include in the cost estimate reasonable costs for teaching and related personnel. Related personnel are limited to—

(i) Personnel assisting teachers in records-keeping and instructional material;

(ii) Personnel assisting teachers in the laboratory;

(iii) Supply room personnel;

(iv) Library personnel;

(v) Counseling personnel; and

(vi) Persons supervising teachers and other related personnel.

(2) The following costs are unreasonable and shall not be included in the cost estimate:

(i) The cost of the formal training of instructors hired as fully qualified to teach;

(ii) The full-time salary of a teacher teaching less than 25 hours of classes per week, unless the school clearly substantiates by documentation that other schools in the general area pay full salary to similarly qualified instructors for teaching the same number of hours per week;

(iii) Any salary in excess of the prevailing rate in the area for similarly qualified instructors;

(iv) Costs of excess clerical personnel to assist teachers in records-keeping. Unless the school submits strong justification for a lesser ratio, no more than one clerk's salary will be included for an average of 100 students per day; and

(v) Costs of nonrelated personnel. (38 U.S.C. 1631, 1641, 1696)

(m) *Costs: textbooks.* The State approving agency may include only the costs of the following books in its cost estimate:

(1) All textbooks used in the course;

(2) All workbooks if they are the only books used in the course. (38 U.S.C. 1631, 1641, 1696)

(n) *Costs: travel.* (1) The State approving agency may include in its costs estimate reasonable costs of travel. These include—

(i) Required travel expenses for supervisors;

(ii) Travel expenses for itinerant instructors who commute from the principal campus at which they are regularly employed;

(iii) Travel expenses for bringing instructors and administrative personnel to not more than one in-service training session each semester or term.

(2) The following travel expenses are not reasonable and may not be included in the cost estimate:

(i) A daily commuting expense paid to bring full-time instructors from their place of residence to their place of employment;

(ii) Bus transportation for field trips to home campuses, and

(iii) Any travel expenses for instructors not set forth in paragraph (n)(1) of this section. (38 U.S.C. 1631, 1641, 1696)

(o) *Contingency fund.* A contingency fund for profit and nonprofit schools not to exceed 5 percent of the other acceptable costs may be included as an acceptable cost, if the surplus has been offset on the rate established. If the Predischarge Education Program is terminated or if approval for a Predischarge Education Program course is withdrawn the following provisions apply:

(1) The amount of money remaining in the fund to which the school is not entitled shall be paid to the Veterans Administration.

(2) Within 6 months following the date of termination or withdrawal of approval, the school shall verify that the money has been paid by auditing the financial records of the program. A copy of the audit shall be furnished to the Veterans Administration field station of jurisdiction.

(3) The records necessary to support the audit will be kept intact and in good condition at the school for at least 3 years following the day the audit is completed. Longer retention will not be required unless a written

request is received from the General Accounting Office or the Veterans Administration not later than 30 days before the end of the 3-year period. (38 U.S.C. 1631, 1641, 1696)

(p) *Referrals.* (1) If the State approving agency and the school are unable to agree on the estimated cost of a Predischarge Education Program where there is no same program, the State will report the full facts to the Veterans Administration regional office. If the regional office is unable to resolve the question, the matter will be referred to the Director, Education and Rehabilitation Service to determine cost.

(2) In making cost determinations the Veterans Administration—

(i) Will use only cost data that has been certified by a Certified Public Accountant or by the Service Department operating the base on which the Predischarge Education Program is being offered; and

(ii) Will make an analysis to determine whether the customary teaching practices and the customary organizational practices of the institution on campus do reflect reasonable and necessary expenses of conducting the program. (38 U.S.C. 1641, 1696)

(q) *Refund policy.* An individual who discontinues a course or courses in a Predischarge Education Program must be given a pro rata refund if the rates of the program are based on cost data. (38 U.S.C. 1641, 1696)

COURSES

§ 21.5250 Courses.

In administering benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration and, where appropriate, the State approving agencies shall apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36.

(a) Section 21.4250 (except paragraphs (c) (1) and (6) of this section)—Approval of courses. (38 U.S.C. 1641, 1772)

(b) Section 21.4251—Period of operation of course. (38 U.S.C. 1641, 1789)

(c) Section 21.4252 (except paragraph (f) of this section)—Courses precluded. (38 U.S.C. 1641, 1673)

(d) Section 21.4253—Accredited courses. (38 U.S.C. 1641, 1775)

(e) Section 21.4254—Nonaccredited courses. (38 U.S.C. 1641, 1776)

(f) Section 21.4255—Refund policy; nonaccredited courses. (38 U.S.C. 1641, 1776)

(g) Section 21.4256—Correspondence courses. (38 U.S.C. 1641, 1786)

(h) Section 21.4258 (except paragraph (c) of this section)—Notice of approval. (38 U.S.C. 1641, 1778)

(i) Section 21.4259—Suspension or disapproval. (38 U.S.C. 1641, 1779)

(j) Section 21.4260—Courses in foreign countries. (38 U.S.C. 1641, 1676)

(k) Section 21.4263—Flight training; 38 U.S.C. chapter 34. (38 U.S.C. 1641, 1677)

(l) Section 21.4265 (except paragraph (g) of this section)—Practical training approved as institutional training. (38 U.S.C. 1641, 1772)

(m) Section 21.4266—Courses offered at subsidiary branches or extensions. (38 U.S.C. 1641, 1772, 1789(c))

ASSESSMENT AND PURSUIT OF COURSE

§ 21.5270 Assessment and pursuit of course.

In the administration of benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration shall apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36.

(a) Section 21.4270 (except those portions of the section and footnotes dealing with cooperative, farm cooperative, apprentice and other on-job training)—Measurement of courses. For the purpose of benefits payable under chapter 32 that training identified in § 21.4270 as less than one-half and more than one-quarter time will be treated as one-quarter time training. (38 U.S.C. 1641, 1788)

(b) Section 21.4271—Trade or Technical; high schools. (38 U.S.C. 1641, 1788)

(c) Section 21.4272 (except paragraph (f)(2) of this section)—Collegiate undergraduate; credit-hours basis. (38 U.S.C. 1641, 1788)

(d) Section 21.4273—Collegiate graduate. (38 U.S.C. 1641, 1788)

(e) Section 21.4274—Law courses. (38 U.S.C. 1641, 1788)

(f) Section 21.4275—Practical training courses; measurement. (38 U.S.C. 1641, 1788)

(g) Section 21.4277—Discontinuance; unsatisfactory progress and conduct. (38 U.S.C. 1641, 1674)

(h) Section 21.4278—Reentrance after discontinuance. (38 U.S.C. 1641, 1674)

(i) Section 21.4279—Combination correspondence; residence program. (38 U.S.C. 1641, 1788)

(j) Section 21.4280—Independent study leading to a standard college degree. (38 U.S.C. 1641, 1673)

NONDISCRIMINATION IN VOCATIONAL REHABILITATION AND EDUCATIONAL PROGRAMS—TITLE VI, CIVIL RIGHTS ACT OF 1964

§ 21.5300 Civil rights.

In administering benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration shall apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4300—Civil rights assurances; title VI, Pub. L. 88-352.

(b) Section 21.4301—Institutions of higher learning; elementary and secondary schools; medical institutions.

(c) Section 21.4302—Proprietary vocational schools and training establishments.

(d) Section 21.4303—State approving agencies.

(e) Section 21.4304—Assurance of compliance received—institutions of higher learning; elementary and secondary schools; medical facilities.

(f) Section 21.4305—Noncompliance; complaints; initial action.

(g) Section 21.4306—Payments after final agency action.

(h) Section 21.4307—Posttermination compliance. (38 U.S.C. 1641)

EDUCATION LOANS

§ 21.5500 Education loans.

In administering benefits payable under chapter 32, title 38, U.S.C., the Veterans Administration shall apply the following sections in the same

manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4500—Definitions. (38 U.S.C. 1631, 1798)

(b) Section 21.4501—Eligibility (the individual must, in lieu of the requirements for eligibility stated in paragraph (b)(2) of this section, be a participant in receipt of educational assistance benefits under chapter 32). (38 U.S.C. 1631, 1798)

(c) Section 21.4502—Applications. (38 U.S.C. 1631, 1798)

(d) Section 21.4503—Determination of loan amount (except that, notwithstanding paragraph (b)(2) of this section, the maximum to be loaned will be obtained by multiplying the number of months of chapter 32 entitlement remaining times the monthly rate determined in accordance with § 21.5138, or \$2,500 per year whichever is the lesser). (38 U.S.C. 1631, 1798)

PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION UNDER FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

- 25.1 Purpose and coverage.
- 25.2 General considerations.
- 25.3 Review of activities for compliance with titles II and III.
- 25.4 Public information.

Subpart B—Assurance of Adequate Replacement Housing Prior to Displacement

- 25.21 Assurance of availability.
- 25.22 Housing provided as a last resort.
- 25.23 Loans for planning and preliminary expenses.

Subpart C—Moving and Related Expenses

- 25.31 Eligibility.
- 25.32 Actual reasonable expenses in moving.
- 25.33 Exclusions.
- 25.34 Expenses in searching for replacement business or farm.
- 25.35 Actual direct losses by business or farm operation.

Subpart D—Payments in Lieu of Moving and Related Expenses

- 25.41 Dwellings; schedules.
- 25.42 Businesses; eligibility.

Sec.

- 25.43 Farms; partial taking.
- 25.44 Nonprofit organizations.
- 25.45 Net earnings.
- 25.46 Amount of business fixed payment.

Subpart E—Replacement Housing Payment for Homeowners

- 25.51 Eligibility.
- 25.52 Comparable replacement dwelling.
- 25.53 Computation of replacement housing payment.

Subpart F—Replacement Housing Payments for Tenants and Certain Others

- 25.61 Eligibility.
- 25.62 Computation of replacement housing payments for displaced tenants.
- 25.63 Computation of replacement housing payments for certain others.

Subpart G—Relocation Assistance Advisory Services

- 25.71 Relocation assistance advisory program.
- 25.72 Coordination of planned relocation activities.
- 25.73 Contracting for relocation services.

Subpart H—Federally Assisted Programs

- 25.81 Assurances.
- 25.82 Administration; relocation assistance programs.

Subpart I—Uniform Real Property Acquisition Policy

- 25.101 Applicability.
- 25.102 Acquisition procedures.
- 25.103 Condemnation.
- 25.104 Improvements owned by tenants.
- 25.105 Expenses incidental to transfer of title to the United States.
- 25.106 Lease to former owner or occupant.
- 25.107 Litigation expenses.

Subpart J—Definitions

- 25.121 Applicability.
- 25.122 General.
- 25.123 Definitions.
- 25.124 Financial means.

Subpart K—Administrative Review

- 25.131 Administrative review.

AUTHORITY: Sec. 213, Pub. L. 91-646, 84 Stat. 1900; (38 U.S.C. 210).

SOURCE: 38 FR 22779, Aug. 24, 1973, unless otherwise noted.

Subpart A—General

§ 25.1 Purpose and coverage.

(a) Part 25 prescribes the policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, approved January 2, 1971) hereinafter referred to as the Act, to assure the fair, equitable, and uniform treatment of persons displaced by Federal and federally assisted programs. All references in this part to sections or subsections are references to sections or subsections of the Act. In the event of any conflict between this part and the provisions of the Act, or any other applicable law, the statutory provision shall prevail.

(b) Provisions of this part are applicable to projects which are part of a Federal or federally assisted program administered by the Veterans Administration and which after January 1, 1971, cause the displacement of persons or the acquisition of real property, including acquisition by a State agency without Federal financial assistance.

§ 25.2 General considerations.

(a) Consideration has been given to the following in the development of this part.

(1) House Report 91-1656 of December 2, 1970, A Report to Accompany S. 1, Committee on Public Works, House of Representatives, 91st Congress, 2nd Session, and

(2) Provisions of other applicable law, including title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), OMB Circular A-103, and good faith and reasonableness.

(b) The Act shall be applied and administered to promote its underlying purposes and policies.

(c) Veterans Administration officials responsible for programs under *his Act will assure that;

(1) A written notice of displacement be given to each individual, family, business, or farm operation to be displaced. Such notice shall be served

personally or by certified (or registered) first-class mail.

(2) In order to qualify for benefits under title II of the Act as a displaced person, either of two conditions be fulfilled:

(i) The person must have moved (or moved his personal property) as a result of the receipt of a written notice to vacate which notice may have been given before or after initiation of negotiations for acquisition of the property as prescribed by this part. When negotiations are initiated prior to issuance of a written notice, all persons contacted by the negotiating agency should be advised that the benefits of the Act are available only when the person moves subsequent to receipt of a written notice; or

(ii) The subject real property must in fact have been acquired, and the person must have moved as a result of its acquisition (except in those instances covered by Sections 217 and 219).

(3) In addition, certain of the benefits provided by title II of the Act are available as follows:

(i) Whenever the acquisition of, or notice to move from, real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move the personal property from such other real property, such person may receive the benefits provided by Sections 202 (a) and (b) and 205.

(ii) If the Administrator determines that any person, occupying property immediately adjacent to the real property acquired, is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under Section 205(c).

(4) For real property acquisitions under Federal law, contracts or options to purchase real property shall not incorporate provisions for making payments for relocation costs and related items in title II of the Act. Appraisers shall not give consideration to or include in their real property appraisals any allowances for the benefits provided by title II. In the event of condemnation with a declaration of taking, the estimated compensation shall be determined solely on the basis

of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II of the Act.

(5) Applications for benefits under the Act are to be made within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired; or the date on which the displacing agency makes final payment of all costs of that real property, whichever is the later date. The Administrator may extend this period upon a proper showing of good cause.

(6) The provisions of the Act apply to the acquisition of all real property for, and the relocation of all persons displaced by, Federal programs and projects and programs and projects undertaken by State agencies which receive Federal financial assistance for all or part of the cost. It is immaterial whether the real property is acquired by a Federal or State agency or whether Federal funds contribute to the cost of the real property.

§ 25.3 Review of activities for compliance with titles II and III.

The Administrator shall provide for periodic review of all Federal and federally assisted programs to insure compliance with the provisions of titles II and III of the Act.

§ 25.4 Public information.

The Administrator will make available to the public full information concerning the agency's relocation programs and he shall insure that persons to be displaced are fully informed, at the earliest possible time, of such matters as available relocation payments and assistance; the specific plans and procedures for assuring that suitable replacement housing will be available for homeowners and tenants, in advance of displacement; the eligibility requirements and procedures for obtaining such payments and assistance; and the right of administrative review by the head of the agency concerned as provided in § 25.131.

Subpart B—Assurance of Adequate Replacement Housing Prior to Displacement

§ 25.21 Assurance of availability.

(a) *Availability.* The Veterans Administration may not proceed with any phase of a project or authorize a State agency to proceed with any phase of a project which will cause the displacement of any person until the Administrator has determined, or received satisfactory assurances from the displacing State agency, that within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as described in paragraph (d) of this section, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment.

(b) *Support.* The determination or assurances shall be based on a current survey and analysis of available replacement housing by the Veterans Administration or the displacing State agency. Such survey and analysis must take into account the competing demands on available housing.

(c) *Waiver.* Pursuant to Section 205(c)(3), the Administrator may waive the assurances prescribed by this section whenever, in his judgment, the immediate possession of real property is of overriding importance. Each waiver of assurance of replacement housing shall be supported by appropriate findings and a determination of the necessity for the waiver. Determinations so made shall be included in the annual report required by Section 214.

(d) *Decent, safe, and sanitary housing.* A decent, safe, and sanitary dwelling is one which is found to be in sound, clean, and weathertight condition, and which meets local housing codes. The Administrator shall consid-

er the following criteria in determining if a dwelling unit is decent, safe, and sanitary. Adjustments may only be made in the cases of unusual circumstances or in unique geographical areas.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink; a cooking stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bathroom and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping units.* A non-housekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the Administrator.

(3) *Occupancy standards.* Occupancy standards for replacement housing shall comply with agency approved occupancy requirements or comply with local codes.

(4) *Absence or inadequacy of local standards.* In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the Administrator may establish the standards.

(5) *Facilities.* A dwelling unit meeting the physical and occupancy standards stated in this section shall only be considered as suitable replacement housing when it is reasonably convenient to such community facilities as schools, stores, and public transportation.

§ 25.22 Housing provided as a last resort.

When it is determined under § 25.21 that adequate replacement housing is not available, and cannot otherwise be made available, the Administrator will take action or approve action by a State agency to develop replacement housing as authorized by Section 206(a). The Administrator in taking or approving such action for replacement housing will be guided by the criteria and procedures issued by the Secretary of Housing and Urban Develop-

ment. A State agency taking such action will comply with the requirements and procedures of the Veterans Administration.

§ 25.23 Loans for planning and preliminary expenses.

The Administrator will be guided by the criteria and procedures developed by the Secretary of Housing and Urban Development when providing loans to eligible borrowers for planning and other preliminary expenses authorized under sec. 215. A State agency providing such loans will comply with the requirements and procedures of the Federal agency providing the Federal financial assistance.

Subpart C—Moving and Related Expenses

§ 25.31 Eligibility.

(a) Any displaced person (including one who conducts a business or farm operation) is eligible to receive a payment for moving expenses. A person who lives on his business or farm property may be eligible for both moving and related expenses as a dwelling occupant in addition to being eligible for payments with respect to displacement from a business or farm operation.

(b) Any person who moves from real property or moves his personal property from real property, as a result of the acquisition of such real property in whole or part, or as a result of a written notice of the Veterans Administration to vacate real property, or solely for the purposes of Sections 202 (a) and (b) as a result of the acquisition of, or a written notice of the Veterans Administration to vacate, other real property on which such person conducts a farm or business, is eligible to receive a payment for moving expenses.

§ 25.32 Actual reasonable expenses in moving.

(a) *Allowable moving expenses.* (1) Transportation of individuals, families and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the Administrator deter-

mines that relocation beyond the 50-mile area is justified.

(2) Packing and unpacking, crating and uncrating of personal property.

(3) Advertising, for packing, crating, and transportation when the Administrator determines that it is necessary.

(4) Storage of personal property for a period generally not to exceed 12 months when the Administrator determines that storage is necessary in connection with relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, reestablishment, including such modifications as deemed necessary by the Veterans Administration, of and reconnection of utilities for, machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personalty and that the displacing agency is released from any payment for the property.

(7) Property lost, stolen or damaged (without the fault or negligence of the displaced person, his agent or employees) in the process of moving where insurance to cover such loss or damage is not available.

(8) Such other reasonable expenses determined to be allowable by the Administrator.

(b) *Limitations.* (1) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially, unless the Administrator determines a greater amount is justified.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the estimated cost of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate

in relation to the value, in the judgment of the Administrator, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junk yards, stock-piled sand, gravel, minerals, metals, and similar type items of personal property.

(4) If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to or in excess of the in-place value of the display, consideration should be given to acquiring such display or displays as a part of the real property, unless such acquisition is prohibited by State law.

§ 25.33 Exclusions.

A displaced person is not entitled to be paid for

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures or other improvements in which the displaced person reserved ownership except as otherwise provided by law.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of good will.

(f) Loss of profits.

(g) Loss of trained employees.

(h) Personal injury.

(i) Cost of preparing the application for moving and related expenses.

(j) Payment for search cost in connection with locating a replacement dwelling.

(k) Such other items as the Administrator determines should be excluded.

§ 25.34 Expenses in searching for replacement business or farm.

(a) *Allowable.* (1) Actual travel costs.

(2) Extra costs for meals and lodging.

(3) Time spent in searching at the rate of the displaced person's salary or

earnings, but not to exceed \$10 per hour.

(4) In the discretion of the Administrator, necessary broker, real estate, or other professional fees to locate a replacement business or farm operation.

(b) *Limitation.* The total amount a displaced person may be paid for searching expenses may not exceed \$500, unless the Administrator determines that a greater amount is justified based on the circumstances involved. The justification for such an exception will be documented.

§ 25.35 Actual direct losses by business or farm operation.

When the displaced person does not move personal property, he should be required to make a bona fide effort to sell it, and should be reimbursed for the reasonable costs incurred.

(a) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the fair market value of the personal property for continued use at its location prior to displacement and the sale proceeds, or the estimated costs of moving 50 miles, whichever is less.

(b) When the personal property is abandoned, the displaced person is entitled to payment for the fair market value of the property for continued use at its location prior to displacement or the estimated cost of moving 50 miles whichever is less.

(c) The cost of removal of the personal property shall not be considered as an offsetting charge against other payments to the displaced person.

Subpart D—Payments in Lieu of Moving and Related Expenses

§ 25.41 Dwellings; schedules.

(a) Any displaced person eligible for payments under Section 202(b), who is displaced from a dwelling and who so elects, may receive a moving expense allowance determined according to the moving expense allowance schedules set forth in Appendix B, Part 25, Title 49, CFR, not to exceed \$300, and a displacement allowance of \$200.

(b) When said schedules are not applicable, the heads of Federal agencies

undertaking or providing Federal financial assistance to a project causing displacement in such areas shall cooperate in the development of a single moving expense schedule for the use of all these displacing agencies.

(c) A displaced person, who elects to receive a payment based on a schedule, shall be paid under the schedule used in the jurisdiction in which the displacement occurs regardless of where he relocates.

§ 25.42 Businesses; eligibility.

(a) A person displaced from his business, as defined in Sections 101(7) (A), (B), and (C) is eligible under Section 202(c) to receive a fixed payment in lieu of moving and related expenses. Care must be exercised, in each instance, however, to assure that such payments are made only in connection with a bona fide business. The Administrator will make a determination with respect to whether a given activity constitutes such a business.

(b) Those businesses described in Section 101(7)(D) are not eligible under Section 202(c) for a fixed payment in lieu of moving and related expenses.

(c) Where a displaced person is displaced from his place of business, no payment shall be made under Section 202(c) until after the Administrator determines that the business is not part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business, and that the business cannot be relocated without a substantial loss of existing patronage. The determination of loss of existing patronage shall be made by the Administrator only after consideration of all pertinent circumstances, including but not limited to the following factors:

(1) The type of business conducted by the displaced concern.

(2) The nature of the clientele of the displaced concern.

(3) The relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person.

§ 25.43 Farms; partial taking.

Where a displaced person is displaced from only a part of his farm operation, the fixed payment provided by Section 202(c) shall be made only if the displacing agency determines that the farm met the definition of a farm operation prior to the acquisition and that the property remaining after the acquisition can no longer meet the definition of a farm operation.

§ 25.44 Nonprofit organizations.

Where a nonprofit organization is displaced, no payment shall be made under Section 202(c) until after the Administrator determines:

(a) That the nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with a nonprofit organization includes the persons, community or clientele served or affected by the activities of the nonprofit organization.

(b) That the nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

§ 25.45 Net earnings.

The term "average annual net earnings" as used in Section 202(c) means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the Administrator determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period. If a business or farm operation has no net earnings, or has suffered losses during the period used to compute "average annual net earnings" it may nevertheless receive the \$2,500 minimum payment authorized by such Section 202(c).

§ 25.46 Amount of business fixed payment.

The fixed payment to a person displaced from a farm operation, or from his place of business, including nonprofit organizations, shall be in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500 nor more than \$10,000.

Subpart E—Replacement Housing Payment for Homeowners**§ 25.51 Eligibility.**

(a) A displaced owner-occupant is eligible for a replacement housing payment authorized by Section 203(a), not to exceed \$15,000, if he meets both of the following requirements:

(1) Actually owned and occupied the acquired dwelling from which displaced for not less than 180 days prior to the initiation of negotiations for the property, or owned or occupied the property covered or qualified under Section 217 for not less than 180 days prior to displacement. The term "initiation of negotiations" means the day on which the acquiring agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property.

(2) Purchases and occupies a replacement dwelling, which is decent, safe and sanitary, not later than the end of the 1-year period beginning on the date on which he receives from the displacing agency the final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) A displaced owner-occupant of a dwelling who is determined to be ineligible under this section may be eligible for a replacement housing payment under § 25.61.

§ 25.52 Comparable replacement dwelling.

(a) For the purposes of rendering relocation assistance by making referrals for replacement housing and for computation of the replacement housing payment, a comparable replacement dwelling is one which is:

(1) Decent, safe, and sanitary.

(2) Functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(3) Adequate in size to meet the needs of the displaced family or individual. However, at the option of the displaced person, a replacement dwelling may exceed his needs when the replacement dwelling has the same number of rooms or the equivalent square footage as the dwelling from which he was displaced.

(4) Open to all persons, regardless of race, color, religion, or national origin, consistent with the requirements of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968.

(5) Located in an area not generally less desirable than the one in which the acquired dwelling is located, with respect to:

(i) Neighborhood conditions, including but not limited to municipal services and other environmental factors,

(ii) Public utilities, and

(iii) Public and commercial facilities.

(6) Reasonably accessible to the displaced person's place of employment or potential place of employment.

(7) Within the financial means of the displaced family or individual.

(8) Available on the market to the displaced person.

(b) If housing meeting the requirements of this section is not available on the market, the Administrator shall, upon a proper finding of the necessity therefor, consider available housing exceeding these basic criteria.

§ 25.53 Computation of replacement housing

The replacement housing payment of not more than \$15,000 comprises the following:

(a) *Differential payment for replacement housing.* The Administrator shall determine the amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, is necessary to purchase a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* The Veterans Administration shall establish a sched-

ule of reasonable acquisition costs for comparable replacement dwellings of the various types of dwellings to be acquired and available on the private market. The schedule shall be based on a current market analysis sufficient to support determinations of the amount for each type of dwelling to be acquired. When more than one Federal agency is causing displacement in a community or an area, the heads of the agencies concerned shall coordinate the establishment of a schedule for replacement housing payments.

(2) *Comparative method.* The Veterans Administration shall determine the price of a comparable replacement dwelling by selecting a dwelling or dwellings most representative of the dwelling unit acquired, available to the displaced person, and which meets the definition of comparable replacement dwelling. A single dwelling shall be used only when additional comparable dwellings are not available.

(3) *Alternate method.* The Administrator may develop criteria for computing replacement housing payments when neither the schedule method nor the comparative method is feasible. An alternate method proposed by a State agency shall be subject to prior concurrence of the Veterans Administration.

(4) *Limitations.* The amount established as the differential payment for the replacement housing sets the upper limit of this payment.

(i) If the displaced person voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the upper limit set, the comparable replacement housing payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(ii) If the displaced person voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(b) *Interest payment.* The Administrator shall determine the amount, if any, necessary to compensate a displaced person for any increased interest costs, including points paid by the

purchaser. Such amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage. The following shall be considered:

(1) The payment shall be equal to the excess of the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the bona fide mortgage on the acquired dwelling, at the time of acquisition, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value.

(2) The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3) A "bona fide mortgage" is one which was a valid lien on the acquired dwelling for not less than 180 days prior to the initiation of negotiations.

(4) The interest payment shall be based on the present value of the reasonable cost of the interest differential, including points paid by the purchaser, on the amount financed not to exceed the amount of the unpaid debt on the acquired dwelling for its remaining term.

(c) *Incidental expenses.* (1) The Administrator shall determine the amount, if any, necessary to reimburse a displaced person for actual costs incurred by him incident to the purchase of the replacement dwelling (but not including prepaid expenses such as:

(i) Legal, closing and related costs including title search, preparing conveyance instruments, notary fees, surveys, preparing plats, and charges incident to recordation.

(ii) Lenders', FHA, or VA appraisal fees.

(iii) FHA application fee.

(iv) Certification of structural soundness when required by lender, FHA, or VA.

(v) Credit report.

(vi) Title policies or abstracts of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps or sale or transfer taxes.

(2) No fee, cost, charge, or expense is reimbursable which is determined to

be a part of the finance charge under the Truth in Lending Act, title I, Pub. L. 90-321 (82 Stat. 146), and Regulation Z (12 CFR Part 226), issued pursuant thereto by the Board of Governors of the Federal Reserve System.

Subpart F—Replacement Housing Payments for Tenants and Certain Others

§ 25.61 Eligibility.

(a) A displaced tenant or owner-occupant of a dwelling for less than 180 days is eligible for a replacement housing payment not to exceed \$4,000, as authorized by Section 204, if he meets both of the following requirements:

(1) Actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the property or actually occupies the property covered or qualified under Section 217 for not less than 90 days prior to displacement. The term "initiation of negotiations" means the date the acquiring agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property. The Administrator shall advise tenants and other persons occupying the property to be acquired when negotiations for the property are initiated with the owner thereof.

(2) Is not eligible to receive a payment under Section 203.

(b) An owner-occupant of a dwelling for not less than 180 days prior to the initiation of negotiations is eligible for a replacement housing payment as a tenant, as authorized by Section 204, when he rents a decent, safe and sanitary replacement dwelling instead of purchasing and occupying a replacement dwelling, which is decent, safe and sanitary not later than the end of the 1-year period beginning on the date on which he receives from the displacing agency final payment for all costs for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

§ 25.62 Computation of replacement housing payments for displaced tenants.

A displaced tenant is eligible for a rental replacement housing payment; or, if he purchases replacement housing within 1 year from displacement, he is eligible for a downpayment including expenses incidental to closing not to exceed \$4,000.

(a) *Rental replacement housing payment.* The Administrator shall determine the amount necessary to rent a comparable replacement dwelling by either establishing a schedule or by using a comparative method.

Schedule method. The Administrator may establish a rental schedule for renting comparable replacement dwellings as described in § 25.52 and which are available in the private market for the various types of dwellings to be acquired. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount forty-eight times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiation if such rent was reasonable, and, if not reasonable, forty-eight times the economic rent for the dwelling unit established by the displacing agency. Economic rent is defined as the amount of rent the displaced tenant would have had to pay for a comparable dwelling unit in an area similar to the neighborhood in which the dwelling unit to be acquired is located. The schedule will be based on current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency is causing the displacement in a community or an area, the respective agency heads shall cooperate in choosing the method for computing the replacement housing payment and shall use uniform schedules of average rental housing in the community or area.

(2) *Comparative method.* The Administrator may determine the average month's rent by selecting one or more dwellings most representative of the dwelling unit acquired which is available to the displaced person and meets the definition of a comparable

replacement dwelling as described in § 25.52. The payment will be computed by determining the amount necessary to rent a comparable replacement dwelling for 4 years and subtracting from such amount forty-eight times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations, if such rent was reasonable.

(3) *Exceptions.* The Administrator may establish the average month's rent paid by the displaced person by using more than 3 months, if he deems it advisable. If rent is being paid to the displacing agency, economic rent shall be used in determining the amount of the payment to which the displaced tenant is entitled.

(4) *Alternate to paragraphs (a)(1) and (a)(2) of this section.* When neither the schedule nor the comparative method of computing the rental differential payment is feasible, the Administrator shall develop criteria for computing the payment.

(5) *Exception to lump-sum payment rule.* As a general rule, payment of the rental replacement housing differential payment authorized by § 25.63(a) shall be made in a lump-sum payment. Exceptions to this general rule may be made only when deemed advisable in consideration of the displaced person's present status as to decent, safe, and sanitary conditions, income, and the wishes of the displacee.

(b) *Purchases; replacement housing payment.* If the tenant elects to purchase instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a downpayment and to cover incidental expenses on the purchase of replacement housing as follows:

(1) The downpayment shall be the amount necessary to make a downpayment on a comparable replacement dwelling. Determination of the amount necessary for such downpayment shall be based on the amount of downpayment that would be required for purchase of the dwelling using a conventional loan.

(2) Incidental expenses of closing the transaction are those as described in § 25.53(c).

(3) The maximum payment may not exceed \$4,000, except that if more

than \$2,000 is required, the tenant must match any amount in excess of \$2,000 by an equal amount in making the downpayment.

(4) The full amount of the replacement housing payment must be applied to the purchase price and incidental costs shown on the closing statement.

§ 25.63 Computation of replacement housing payments for certain others.

(a) A displaced owner-occupant who does not qualify for a replacement housing payment under § 25.51 because of the 180-day occupancy requirement and elects to rent is eligible for a rental replacement housing payment not to exceed \$4,000. The payment will be computed in the same manner as shown in § 25.62(a) except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under § 25.51 because of the 180-day occupancy requirement and elects to purchase a replacement dwelling is eligible for a replacement housing downpayment and closing costs not to exceed \$4,000. The payment will be computed in the same manner as shown in § 25.62(b).

Subpart G—Relocation Assistance Advisory Services

§ 25.71 Relocation assistance advisory program.

Whenever the acquisition of real property for a program or project undertaken by the Veterans Administration will result in the displacement of any person, the Administrator shall establish a relocation assistance advisory program for the displaced person or persons. If the Administrator determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under this program. Where a federally assisted project is involved in the displacement, the State agency shall provide the advisory services. Each relocation

assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate to:

(a) Determine the need, if any, of displaced persons, for relocation assistance;

(b) Provide current continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing and of comparable commercial properties and locations for displaced businesses;

(c) Insure the availability of adequate replacement housing prior to displacement as prescribed in § 25.21;

(d) Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(e) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(f) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

§ 25.72 Coordination of planned relocation activities.

(a) *Federal coordination.* Whenever the Veterans' Administration, in conjunction with one or more other Federal agencies, plans displacement activities in a given community or area, the heads of such agencies responsible for the planned activities shall arrange for appropriate channels of communication between each other for the purpose of planning relocation activities and coordinating available housing resources. The agencies involved shall:

(1) Consult with the appropriate Housing and Urban Development Regional or Area Office within the jurisdictional area concerning the availability of housing. (A directory of such Regional and Area Offices is maintained on a current basis by the Department of Housing and Urban Development and subsequent updated directories will be furnished upon request.);

(2) Provide the Housing and Urban Development Regional or Area Offices

with information regarding the projects which will cause displacement; and

(3) Designate at least one representative who will meet periodically with the representatives of other Federal agencies causing displacement in the community to review the impact of their respective programs on the community or area.

(b) *Local coordination.* To further insure maximum coordination of relocation activities in a given community or area, the Administrator shall consult with appropriate local officials prior to approving any proposed project in the community, consistent with the requirements of the procedures promulgated by the Office of Management and Budget Circular A-95 (Revised).

§ 25.73 Contracting for relocation services.

(a) *Contracting with central relocation agency.* Whenever, in his judgment, the Administrator deems it advisable, he may consider contracting with the central relocation agency in a community or area for the purpose of carrying out the relocation activities described in this part. Such services will be performed in strict accordance with Pub. L. 91-646 and this part. The appropriate Housing and Urban Development Regional/Area Office shall be consulted for information and assistance concerning contracts for these services.

(b) *Contracting with others.* When a centralized relocation agency is not available in a community or if the centralized agency does not have the capacity to provide the necessary services, within the time required by the Veterans Administration's program, the Veterans Administration may contract with another public agency or a private contractor who can provide the necessary relocation services. Such services will be performed in strict accordance with Pub. L. 91-646, and this part.

Subpart H—Federally Assisted Programs

§ 25.81 Assurances.

(a) *Information.* The assurances required of State agencies by secs. 210 and 305 will include a statement that the affected persons will be adequately informed of the benefits, policies and procedures described in the assurances.

(b) *Inability to provide assurances for programs or projects causing displacement on or after July 1, 1972.* If a State agency is unable to provide the assurances required by Sections 210 and 305 on or after July 1, 1972, with regard to any program or project that will result in the displacement of any person or the acquisition of any real property, the Administrator shall not approve any grant to, or contract or agreement with, such State agency under which Federal financial assistance will be available to pay all or part of the cost of such program or project, until such time as assurances applicable to all persons to be displaced and owners of real property to be acquired are provided.

(c) *Compliance with Sections 301 and 302.* A State agency, as part of the assurances required by Section 305, shall provide a statement indicating the extent to which it can comply with the provisions of Sections 301 and 302. If the State agency indicates that it is unable to comply fully with any of such policies, its statement shall be supported by an opinion of the chief legal officer of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to comply with any of the provisions set forth in Sections 301 and 302. State agencies will comply with Sections 301 and 302 if, under State law, compliance is legally possible.

(d) *Monitoring assurances.* The Administrator shall take continuing action to insure that State agencies are acting in accordance with the assurances they have provided.

§ 25.82 Administration; relocation assistance programs.

(a) *Approval.* A State agency electing to contract for services pursuant to Section 212 will enter into a written contract consistent with this part. The Administrator shall take affirmative action to assure that the contract is administered so as to provide uniform and effective relocation for all displaced persons, consistent with this part.

(b) *Contract for services by State agencies.* Contracts shall include, as a minimum, the following provisions:

(1) That payments and assistance shall be provided in accordance with this part.

(2) That records required by this part will be retained by the State agency for a period of at least 3 years and shall be available for inspection by representatives of the Veterans Administration.

(3) Clauses implementing title VI of the Civil Rights Act of 1964 (Pub. L. 88-352); and any other provisions required by the Administrator to assure that the project is performed in a manner consistent with this part.

Subpart I—Uniform Real Property Acquisition Policy

§ 25.101 Applicability.

The provisions of title III of the Act apply to the acquisition of real property for Federal and federally assisted programs or projects.

§ 25.102 Acquisition procedures.

(a) *Just compensation.* Section 301(3) requires that, before initiation of negotiations for the acquisition of real property, the Administrator shall establish an amount which he believes to be just compensation therefor. In no event shall such amount be less than the Veterans Administration's approved appraisal of the fair market value of the property.

(b) *Appraisal standards.* For the purpose of promoting uniformity under Section 301(3), the Administrator shall establish, for all Federal or federally assisted programs under his jurisdiction, standards for appraisals used in such programs, criteria for de-

termining the qualifications of appraisers, and a system of review by qualified appraisers, consistent with the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 by the Interagency Land Acquisition Conference.

(c) *Initiation of negotiations.* When negotiations for the acquisition of real property are initiated, the owner shall be provided with a written statement concerning the proposed acquisition. This statement shall include, as a minimum, the following:

(1) Identification of the real property and the estate or interest therein to be acquired including the buildings, structures, and other improvements on the land, as well as the fixtures considered to be a part of the real property, and

(2) The amount of the estimated just compensation for the property to be acquired, as determined by the Veterans' Administration, and a statement of the basis therefor. In the case of a partial taking, damages, if any, to the remaining real property shall be separately stated.

(d) *Offer to purchase.* The Administrator shall make a prompt offer to purchase the property for the amount contained in the statement.

(e) *Notice to move.* Section 301(5) provides for a notice to move and is applicable only in those instances where actual displacement of persons, businesses or farm operations occurs. To the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least 90 days' written notice from the Administrator of the date by which such move is required.

(f) *Federally assisted programs.* In administering Federal financially assisted programs carried out by State agencies the Administrator shall require that State agencies reimburse owners for necessary expenses as specified in Sections 303 and 304. The Administrator also shall require that all State agencies comply with the provisions of Sections 301 and 302 if compliance is legally possible under State law.

§ 25.103 Condemnation.

(a) The time of condemnation will neither be advanced, nor negotiations or condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature taken, in order to compel an agreement on price.

(b) If real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will intentionally be taken which will make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

§ 25.104 Improvements owned by tenants.

(a) Whenever any interest is acquired for a Federal or federally assisted program in any State, the agency will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property, including advertising signs, unless they are excluded as personal property:

(1) Which the agency requires to be removed from the real property, or

(2) Which the agency determines will be adversely affected by the use to which such real property will be put.

(b) The following apply in determining the just compensation for any such buildings, structures, or other improvements:

(1) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to remove them at the expiration of his term.

(2) The fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures or other improvements for removal from the real property, whichever is greater, will be paid the tenant.

(c) Payments under paragraphs (a) and (b) of this section will not be made:

(1) Which result in duplication of any payments otherwise authorized by law.

(2) Unless the owner of the land involved disclaims all interest in such

buildings, structures, or other improvements.

(3) Unless the tenant agrees that in consideration of any such payment he will assign, transfer, and release to the acquiring agency all his right, title and interest in and to such buildings, structures and improvements.

(d) The tenant may reject payment under this section and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

§ 25.105 Expenses incidental to transfer of title to the United States.

As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award in a condemnation to acquire real property, the owner will be reimbursed to the extent the Administrator determines fair and reasonable, for expenses he necessarily incurred for:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the United States;

(b) Costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and

(c) The prorated portion of real property taxes paid which are allowable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

§ 25.106 Lease to former owner or occupant.

If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the Government on short notice, the amount of rent required will not exceed the fair market rental value of the property to a short term occupier.

§ 25.107 Litigation expenses.

In any condemnation proceeding brought by the Veterans Administration to acquire real property, it shall reimburse the owner of any right, title, or interest in the real property

for his reasonable costs disbursements, and expenses, including attorney, appraisal, and engineering fees actually incurred because of the condemnation proceeding if:

(a) The final judgment is that the Veterans Administration cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the United States. The court rendering a judgment for the plaintiff in a proceeding brought under Section 1346(a)(2) or 1491 of title 28, U.S.C. awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, will determine and award or allow to such plaintiff, as part of such judgment or settlement, such sum as will in the opinion of the court, or the Attorney General, reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

Subpart J—Definitions

§ 25.121 Applicability.

The definitions set forth in § 25.123 are intended to implement the Act and the guidelines as set forth in OMB Circular No. A-103, dated May 1, 1972. In the event of any deviation the definitions set forth in the Act will be controlling.

§ 25.122 General.

The following definitions are contained in other sections of this part and shall be applied as indicated in § 25.121.

(a) Comparable replacement housing, § 25.52.

(b) Decent, safe, and sanitary housing, § 25.21(d).

(c) Economic rent, § 25.62(a)(1).

(d) Incidental expenses, § 25.53(c).

(e) Initiation of negotiations, §§ 25.51(a)(1) and 25.61(a)(1).

(f) Interest payment, § 25.53(b).

(g) Net earnings, § 25.45.

§ 25.123 Definitions.

(a) *The Act.* The term "the Act" means the Uniform Relocation Assist-

ance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646), approved January 2, 1971.

(b) *Displacing agency.* The term "displacing agency" means a Federal agency in the case of a direct Federal project or a State agency in the case of a project receiving Federal financial assistance.

(c) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual abode of a person. It includes a single family building; a one-family unit in a multifamily building; a unit of a condominium or cooperative housing project; or any other residential unit, including a mobile home, which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost.

(d) *Family.* The term "family" means two or more individuals who are related by blood, adoption, marriage or legal guardianship who live together as a family unit, or other individuals who consent to live together as a family unit for the purpose of determining benefits under title II of the Act.

(e) *Owner.* The term "owner" means a person who holds fee title, a life estate, a 99-year lease, or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estates or interests or who is possessed of such other proprietary interest in the property acquired as, in the judgment of the Administrator, warrants consideration as ownership. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

(f) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(g) *State*. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(h) *State agency*. The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(i) *Federal financial assistance*. The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(j) *Person*. The term "person" means any individual, partnership, corporation, or association.

(k) *Displaced person*. The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of acquisition of such real property, in whole or in part, or as a result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of Sections 202(a) and (b) and 205 as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(l) *Business*. (1) The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(i) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(ii) For the sale of services to the public;

(iii) By a nonprofit organization; or

(iv) Solely for the purposes of Section 202(a) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(2) Occupations which do not contribute materially to the income of the displaced person are not considered to come within the definition of business.

(3) For the purpose of Section 202(c), and § 25.31 where a warehouse or other storage facility which is acquired by the Government is operated in conjunction with a business, and the business is not so acquired, the warehouse or storage facility is not considered to be a business. An example is a warehouse owned by a furniture store. A lot for the storage of automobiles, which was acquired, and the related car sales business or garage, which was not acquired would fall in the same category.

(m) *Farm operation*. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(n) *Mortgage*. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

§ 25.124 Financial means.

For the purpose of determining financial means of families and individuals in accordance with Section 205(c)(3), a "financial means" test (ability to pay) must be made to satisfy the requirement set forth in § 25.52(a)(7). In order to meet a financial means test a determination will be made as to the displaced person's ability

ty to afford the replacement dwelling. In making this determination, the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by public agencies. The Administrator may provide for determinations that 25 percent of monthly gross income for housing costs or the present ratio of housing payment to the individual income is or is not excessive to the other needs of the displaced family or individual, such as food, clothing, child care, medical expenses, etc. In these cases, the Administrator shall establish criteria for determining the financial means of the displaced family or individual.

Subpart K—Administrative Review

§ 25.131 Administrative review.

(a) Any applicant, whether in connection with a direct Federal program or project or with a State program or project receiving Federal financial assistance who is aggrieved by a determination as to eligibility for a payment authorized by the Act, or the amount of a payment, is entitled to have his application reviewed by the Administrator, or by the head of the State agency, respectively.

(b) The procedures pertaining to administrative review whether by the Administrator or the head of a State agency, shall insure:

(1) Prompt consideration of all requests for administrative review.

(2) Prompt written notice to a claimant of any determination made in connection with his application. This written notice must include a full explanation concerning any amount claimed which has been disallowed.

(3) Prompt payment of any amounts which are determined to be due the claimant.

PART 26—ENVIRONMENTAL EFFECTS OF VA ACTIONS

Sec.

26.1 Reissuance and purpose.

26.2 Applicability and scope.

26.3 Definitions.

26.4 Policy.

26.5 Responsibilities.

ENCLOSURE: VA IMPLEMENTING PROCEDURES

AUTHORITY: 42 U.S.C. 4231 et seq., Executive Order 11514, as amended by EO 11991.

SOURCE: 45 FR 62800, Sept. 22, 1980, unless otherwise noted.

§ 26.1 Reissuance and purpose.

The purpose of these rules is to implement the Council on Environmental Quality (CEQ) Regulations (National Environmental Policy Act Regulations, 40 CFR Parts 1500-1508) and to provide policy and procedures for Veterans Administration (VA) officials to be informed of, and to take into account, environmental considerations when authorizing or approving VA actions that effect the environment in the United States. The Council on Environmental Quality Regulations implement the procedural provisions, section 102(2) of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.), and Executive Order 11514, as amended (35 FR 4247 [1970]), amended by Executive Order 11991, (42 FR 26967 [1977]).

§ 26.2 Applicability and scope.

Provisions of this part apply to the Veterans Administration, and to "VA Components".

§ 26.3 Definitions.

(a) "United States" means all states, territories, and possessions of the United States; and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) "VA Components" means VA operating departments, including Department of Medicine & Surgery, De-

partment of Memorial Affairs, and Department of Veterans Benefits.

(c) Other terms used in this part are defined in Part 1508 of the CEQ Regulations.

§ 26.4 Policy.

(a) The Veterans Administration must act with care in carrying out its mission of providing services for veterans to assure that it does so by complying with national environmental policies. Care must be taken to assure that all practical means and measures are used to protect, to restore, and to enhance the quality of the environment; to avoid or to minimize adverse environmental consequences, consistent with other consideration of national policy; and to attain the following objectives:

(1) Achieving the fullest possible use of the environment without degradation, or undesirable and unintended consequences.

(2) Preserving important historical, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice.

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecological system involved.

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The Veterans Administration and VA Components shall:

(1) Assess environmental consequences of VA actions that affect the environment in accordance with CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act.

(2) Use a systematic, interdisciplinary approach to assure the integrated use of the natural and social sciences, and environmental considerations, in making plans and decisions with a potential for environmental impact.

(3) Assure that presently unmeasured environmental amenities are considered during the decision-making process.

(4) Consider reasonable alternatives for a course of action in any proposal

that involves conflicts concerning alternative uses of resources.

(5) Make available to states, counties, municipalities, institutions, and individuals any advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

§ 26.5 Responsibilities.

(a) The Assistant Deputy Administrator (Director, Office of Environmental Affairs) shall:

(1) Function as the responsible official for all VA environmental matters.

(2) Modify or supplement the enclosures of this part, as required.

(3) Provide assistance in the preparation of environmental assessments and statements and assign lead Component responsibility in preparing environmental documentation, when more than one VA Component is involved.

(4) Direct the preparation of environmental documents.

(5) Provide appropriate, consolidated VA comments requested by other Federal agencies on draft and final environmental impact statements.

(6) Review actions of the VA that have environmental implications.

(7) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, concerning environmental analyses for VA actions affecting the environment.

(b) The General Counsel, VA, shall provide advice and assistance in meeting the requirements of this part.

(c) The heads of the VA Components shall:

(1) Assess environmental consequences of proposed and continuing programs and actions within their respective VA Component.

(2) Prepare and process environmental documents as required by this part.

(3) Integrate environmental considerations into their decisionmaking process.

(4) Assure that regulations and other major policy statements are reviewed for consistency with the requirements of this part.

(5) Provide comments on environmental impact statements for actions within their area of knowledge or concern.

(6) Designate a single point of contact for environmental issues.

ENCLOSURE 1—VA IMPLEMENTING PROCEDURES

A. General.

1. Part 1507.3 of the Council on Environmental Quality Regulations (National Environmental Policy Act Regulations, 40 CFR Parts 1500-1508) directs all Federal agencies to adopt procedures to implement the CEQ Regulations. This enclosure provides detailed VA implementing procedures to supplement the CEQ Regulations.

2. Provisions of this Part must be read together with those of the CEQ Regulations and the Act as a whole when applying the NEPA process.

3. This enclosure is organized sequentially from early planning to the final implementation of a VA action. Section references throughout this enclosure refer to appropriate sections in the CEQ Regulations.

B. Planning Consideration.

1. *Early Planning.* VA Components shall integrate the NEPA process with other planning activities at the earliest possible time to assure that planning and decisions reflect environmental values, to avoid delays later in the process, and to avoid potential conflicts.

2. *Lead Agency.* To determine the lead VA Component or other lead Federal or State agency for actions when more than one VA Component or another Federal agency is involved, VA Components shall apply the criteria defined in Sections 1501.5 and 1501.6 and forward a request for lead agency determination to the Assistant Deputy Administrator (Office of Environmental Affairs).

a. The Assistant Deputy Administrator (Office of Environmental Affairs) will determine lead agency responsibility among VA Components.

b. In environmental issues involving a VA Component and another Federal agency, the Assistant Deputy Administrator (Office of Environmental Affairs) will seek to resolve the differences. If this is not possible, the Assistant Deputy Administrator (Office of Environmental Affairs) will file a request for determination with the Council on Environmental Quality.

3. *Assistance to Applicants.* Section 1501.2(d) provides for advising private applicants or other non-federal groups when VA involvement is reasonably foreseeable. Such reasonably foreseeable actions involve applications to a VA Component by private persons or State and local agencies and pertain

primarily to permits, leases, and requests for financial assistance and grants, and related actions involving the use of VA land and property.

a. The following actions are initiated by private persons, State or local agencies, and other non-VA groups for which VA involvement may be reasonably foreseeable:

(1) Easements and right-of-ways on VA land.

(2) Petroleum, grazing and timber leases.

(3) Permits, licenses, use agreements or other grants of real property for use by non-VA groups.

(4) Application for subdivision approval from Home Loan Guaranty Program.

(5) Application for grants-in-aid for acquisition, construction, expansion or improvement of State veterans' health care facilities and cemeteries.

b. Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the studies or information foreseeably required for later action by VA Components, and will advise of the assistance available to applicants by the VA Component.

c. When VA owned land is leased or otherwise provided to non-VA groups, the VA Component will initiate the NEPA process as early as possible and assure that appropriate consideration is given to environmental conservation factors such as waste disposal, necessary mitigation and long term restoration measures.

d. When VA grant funds are requested by a State agency, the VA Component will, in cooperation with the State, A-95 Clearinghouse, initiate the NEPA process as early as possible, to assure full compliance with environmental and other State and local regulations, before the proposed action is approved.

4. *Determination of Requirement for EIS.* Determining whether to prepare an environmental impact statement is the first step in applying the NEPA process. Early VA determination will assure that necessary environmental documentation is prepared and integrated within the decision-making process. In deciding whether to prepare an environmental impact statement, a VA Component will determine whether the proposal is one that:

a. Normally requires an environmental impact statement.

b. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

c. Normally requires an environmental assessment, but not necessarily an environmental impact statement.

5. *Actions That Normally Require an EIS.* VA Components shall perform an environmental assessment to determine if a propos-

al requires an environmental impact statement. However, it may be readily apparent that a proposed action will have a significant impact on the environment; in such cases, an environmental assessment is not required and the VA Component will immediately begin to prepare the environmental impact statement. To assist in determining if an action normally requires the preparation of an environmental impact statement, the following criteria and categories of action are provided:

a. *Criteria.* Criteria used to determine categories of action that normally require an environmental impact statement are described in Section 1508.27 and include:

(1) Potential for significant degradation of environmental quality, including historic or cultural resources, park lands, prime farmlands, wetlands, or ecologically critical areas.

(2) Significant alteration of VA owned or leased real estate except properties acquired under the home loan guaranty program (Chapter 37, Title 38 U.S.C.).

(3) Potential for threat or hazard to the public, or involving highly uncertain risks to the human environment.

(4) Potential for loss or destruction of significant scientific, cultural or historic resources.

(5) Potential for conflict with Federal, state or local environmental protection laws or requirements.

(6) Similarity to previous actions that required an environmental impact statement.

b. *Categories of Action.* The following categories of action normally require an environmental impact statement:

(1) Construction of major VA facilities.

(2) Major land acquisition, disposal, development of a VA facility or other action that significantly changes land use patterns.

(3) Subdivision approval in connection with the Home Loan Guaranty Program with a flexible threshold determination, as set forth below in TABLE 1, for over 500 housing units within a Standard Metropolitan Statistical Area (SMSA), as a SMSA is defined by the Bureau of the Census.

TABLE 1—FLEXIBLE ENVIRONMENTAL IMPACT STATEMENT THRESHOLDS

SMSA population range	Threshold—housing units
1,500,000 +	2,500
1,000,000 to 1,499,999	2,100
750,000 to 999,999	1,800
600,000 to 749,999	1,500
500,000 to 599,999	1,200
400,000 to 499,999	1,000
300,000 to 399,999	900
200,000 to 299,999	800
100,000 to 199,999	700

TABLE 1—FLEXIBLE ENVIRONMENTAL IMPACT STATEMENT THRESHOLDS—Continued

SMSA population range	Threshold—housing units
50,000 to 99,999	600
Under 50,000	500

c. When a proposed action normally requires an environmental impact statement, a VA Component may prepare an environmental assessment to determine if an environmental impact statement is required.

6. *Categorical Exclusion.* The CEQ Regulations provide for the categorical exclusion (Section 1506.4) of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required for such actions. Full implementation of this concept will permit VA Components to avoid unnecessary or duplicative effort and to concentrate their resources on significant environmental issues.

a. *Criteria.* Criteria used to determine those categories of action that normally do not require either an environmental impact statement or an environmental assessment include:

(1) Minimal or no effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Similarity to actions previously assessed that have no significant environmental impact.

b. *List of Categorical Exclusions.* Categories of action, identified in Annex A to this enclosure, have been determined by the VA to have no significant effect on the human environment; and are therefore categorically excluded from the preparation of environmental impact statements and environmental assessments.

c. *Changes to the List of Categorical Exclusion.*

(1) The VA List of Categorical Exclusion will be continually reviewed and refined as additional categories are identified and as experience is gained in the categorical exclusion process. VA Components may, at any time, recommend additions or changes to the VA List of Categorical Exclusion.

(2) VA Components are encouraged to develop, in their procedures implementing this part, additional categories of exclusion necessary to meet their unique operational and mission requirements. Categories of exclusion identified by a VA Component will be submitted to the Assistant Deputy Adminis-

trator (Office of Environmental Affairs) for review and approval, and for amendments to this part, following public comment and review by the Council on Environmental Quality.

d. *Extraordinary Circumstances.* Determining if a proposal can be categorically excluded is a three step process in which the VA Component will:

(1) Determine the scope of the proposal and identify elements that may affect the environment.

(2) Determine if the proposal is included in one of the categories of action on the VA Component list of categorical exclusion.

(3) Determine if extraordinary circumstances may cause a significant environmental impact. If so, an environmental assessment will be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(a) Greater scope or size than normally experienced for a particular category of action.

(b) Actions in highly populated or congested areas.

(c) Potential for degradation, although slight, of already existing poor environmental conditions.

(d) Use of unproven technology.

(e) Presence of endangered species, archeological remains, or other protected resources.

(f) Use of hazardous or toxic substances.

7. *Actions That Normally Require an Environmental Assessment.* If a project is not one that normally requires an environmental impact statement, and does not qualify for categorical exclusion, the VA Component will prepare an environmental assessment.

a. *Criteria.* Criteria used to determine those categories of action that normally require an environmental assessment, but not necessarily an environmental impact statement, include:

(1) Potential for minor degradation of environmental quality.

(2) Potential for cumulative impact on environmental quality.

(3) Presence of hazardous or toxic substances.

(4) Potential for violation of pollution abatement laws.

(5) Potential for impact on protected resources.

b. *Categories of Action.* The following categories of action normally require the preparation of an environmental assessment. VA Components may identify other categories of action that normally require an environmental assessment. An environmental assessment will normally be required if the proposed action:

(1) Involves acquiring or disposing of land.

(2) Involves land located in a wetland or a flood plain.

(3) Involves storm-water run-off and retainage.

(4) Conflicts with local zoning and planning regulations.

(5) Dislocates persons or residences, or causes major population shifts.

(6) Affects protected wildlife or vegetation.

(7) Involves new VA construction of more than 10,000 square feet.

(8) Increases off-site traffic flow by more than 10 per cent.

(9) Significantly alters off-site traffic flow.

(10) Involves an historically designated building or area.

(11) Conflicts with local, State, or Federal air and water emission and toxic substance standards.

(12) Conflicts with local or State regulations.

(13) Overloads available utility system capacities.

(14) Involves the cumulative use of pesticides.

(15) Disposal of VA real estate other than properties acquired or rehabilitated under the VA Home Loan Program. Other categories of action that normally require an environmental assessment include preparation of regulations, directives, manuals, or other guidance that have a potential for significant impact on the environment.

C. *Environmental Assessment Phase.*

1. *When to Prepare.* VA Components will begin the preparation of an environmental assessment as early as possible after it is determined to be required. VA Components may prepare an environmental assessment at any time to assist planning and decision-making.

2. *Content and Format.* An environmental assessment is a concise public document to determine whether to prepare an environmental impact statement. An environmental assessment aids in complying with the Act when no environmental impact statement is necessary, and it facilitates the preparation of an environmental impact statement, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

a. Purpose and need for the proposed action.

b. Description of the proposed action.

c. Alternatives considered.

d. Environmental impact of the proposed action and alternative actions.

e. Listing of agencies and persons consulted.

f. Mitigating measures to avoid or to minimize environmental harm considered in analyzing the proposed action and alternative actions.

g. Conclusion about the need to prepare an environmental impact statement.

3. *Public Participation.* The VA Components shall include the participation of environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," VA Components will consider:

- a. Magnitude of the proposal.
- b. Likelihood of public interest.
- c. Need to act quickly.
- d. Potential of meaningful public comment.
- e. Need for permits.
- f. Statutory authority of Federal, State, and local environmental agencies related to the proposal.

4. *Finding of No Significant Impact.* If a VA Component completes an environmental assessment and determines that an environmental impact statement is not required, then the VA Component shall prepare a finding of no significant impact in accordance with Section 1501.4(e). The finding of no significant impact shall be made available to the public by the VA Component as specified in Section 1506.6. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on categorical exclusion.

5. *Notice of Intent.* When a VA Component decides to prepare an environmental impact statement, it shall publish a notice of intent in the FEDERAL REGISTER in accordance with Sections 1501.7 and 1506.10. The notice of intent shall be published before initiation of the scoping process.

D. *Environmental Impact Statement Phase.*

1. *Scoping.* After determining that an environmental impact statement will be prepared and publishing the notice of intent, the VA Component will initiate the scoping process in accordance with Section 1501.7.

2. *Preparation.* Based on the scoping process, the VA Component will begin to prepare the environmental impact statement. Procedures for preparing the environmental impact statement are set forth in Section 1502, CEQ Regulations.

3. *Supplemental Environmental Impact Statements.* VA Components may supplement a draft or final environmental impact statement at any time. VA Components shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria contained in Section 1502.9(c). VA Components will prepare, circulate, and file a supplement to an environmental impact statement in the same fashion as a draft or final statement, and will introduce the supplement into their formal administrative record.

4. *Information on the NEPA Process.* Information or status reports on environmental impact statements and other elements of

the NEPA process shall be provided to interested persons upon request.

a. Each VA Component shall designate, in its procedures implementing this part, where interested persons can get such information.

b. For those actions related to the Administrator of the Veterans Administration, the VA Office of Environmental Affairs, or VA Components, information is available by writing the Assistant Deputy Administrator (Office of Environmental Affairs), Veterans Administration, 810 Vermont Ave., N.W., Washington, D.C. 20420.

5. *Circulation of Environmental Impact Statements.* VA Components shall circulate draft and final environmental impact statements as prescribed in Section 1502.19. VA Components shall also provide necessary copies of each draft and each final statement to the Assistant Deputy Administrator (Office of Environmental Affairs).

E. *Pre-implementation Actions.*

1. *Decisionmaking.* VA Components shall assure that decisions are made in full compliance with the policies and procedures of the Act and that the NEPA process is integrated into the decisionmaking process. Proposals and actions may be initiated at any level including the facility level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. VA Components may provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decisionmaking process. In accordance with Section 1505.1, such guidance shall include the following procedures:

a. VA Components, as a minimum, shall consider environmental effects at the following major decision points:

(1) Decision by the initiating organization or facility to forward a proposal to the approval authority.

(2) Decision by any intermediate review authority to forward a proposal to the approval authority.

(3) Decision by the approval authority to implement a proposal shall include:

(a) Relevant environmental documents, comments, and responses that shall be made part of the record.

(b) Relevant environmental documents, comments, and responses that shall accompany a proposal through existing VA Component review processes, so that VA Component decisionmakers use the environmental documents in making their decisions.

(c) Alternative actions considered by the decisionmaker that shall include the range of alternatives discussed in relevant environmental documents. The decisionmaker shall consider the alternatives described in the environmental impact statement.

2. *Record of Decision.* In actions requiring an environmental impact statement, VA Components shall prepare a concise public record of the decision at the time of their decision or, when their recommendation is submitted to Congress, if appropriate. The record of decision is not intended to be an extensive, detailed document justifying the decision. Rather, it is a concise document that describes the decision, the alternatives and relevant factors considered, as specified in Section 1505.2.

3. *Mitigation.* Throughout the NEPA process, VA Components shall consider mitigating measures to avoid or minimize environmental harm. Mitigating measures or programs will be identified, when appropriate, in the environmental impact statement and made available to all decisionmakers. Mitigating and other conditions established in the environmental impact statement, or during its review, and committed as part of the decision, shall be implemented by the VA Component.

4. *Monitoring.* If a VA Component determines that monitoring is required for an established mitigating action or program, then a monitoring program will be adopted to assure that the mitigating measures are accomplished. VA Components shall provide monitoring information, upon request, as specified in Section 1505.3. However, this does not include standing or blanket requests for periodic reporting.

5. *Emergencies.* If an emergency occurs, VA Components may be required to take immediate action with significant environmental impact. VA Components shall notify the Assistant Deputy Administrator (Office on Environmental Affairs) of the emergency action at the earliest possible time to permit the Assistant Deputy Administrator to consult with the Council. VA Components shall not delay any emergency action required to preserve human health.

ANNEX A—VA LIST OF CATEGORICAL EXCLUSION

1. Preparation of regulations, directives, manuals, or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency.

2. Preparation of regulations, directives, manuals, and other guidance related to actions that qualify for categorical exclusion.

3. Procurement activities for goods and services for routine facility operations, maintenance, and support.

4. Routine facility maintenance and ground keeping activities.

5. Minor construction conducted in accordance with approved facility master plans and construction projects on the interiors of buildings including:

a. Safety and Fire Deficiencies (Relocate and Update Fire Alarm System) (Dead-End Corridor Stairs).

b. Air Conditioning/Patient Privacy and Support.

c. Additional Elevators.

d. Primary Distribution System. Secondary Generator-VA Form 10-1193a will be completed and kept in file by the submitting hospital (Medical Center).

e. Air, Oxygen, Vacuum Systems.

f. Heat Run Around System.

g. Automatic Sprinkling Systems.

h. Electrical Deficiencies.

i. Smoke Partitions.

j. Seismic Corrections.

k. Interior Wiring.

l. Interior Renovation: Modifications, modernization of buildings, Operating Rooms, Spinal Cord Injury Units, and Supply Centers.

6. Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

7. Studies that involve no commitment of resources other than manpower and funding.

PART 36—LOAN GUARANTY

GUARANTY OF LOANS TO VETERANS TO PURCHASE MOBILE HOMES AND LOTS, INCLUDING SITE PREPARATION

Sec.

36.4201 Applicability of the § 36.4200 series.

36.4202 Definitions.

GENERAL PROVISIONS

36.4203 Eligibility of the veteran for the mobile home loan benefit under 38 U.S.C. 1819.

36.4204 Loan purposes, maximum loan amounts and terms.

36.4205 Computation of guaranty.

36.4206 Income, credit, occupancy, and nondiscrimination requirements.

36.4207 Mobile home standards.

36.4208 Mobile home location standards.

36.4209 Reporting requirements.

36.4210 Joint loans.

36.4211 Amortization—prepayment.

36.4212 Interest rates and late charges.

36.4213 Capacity of parties.

36.4214 Geographical limits.

36.4215 Accounting records.

36.4216 Disqualification of lenders.

36.4217 Delivery of notice.

36.4218 Payment in full; termination of guaranty.

36.4219 Incorporation by reference.

36.4220 Substantive and procedural requirements; waiver.

Sec.

- 36.4221 Delegation of authority.
- 36.4222 Hazard insurance.
- 36.4223 Interest rate reduction refinancing loan.

FINANCING MOBILE HOME UNITS

- 36.4231 Warranty requirements.
- 36.4232 Allowable fees and charges; mobile home unit.
- 36.4233 Suspension of manufacturers.
- 36.4234 Title and lien requirements.
- 36.4235 Suspension of dealers and mobile home park operators.

COMBINATION AND MOBILE HOME LOT LOANS

- 36.4251 Loans to finance the purchase of mobile homes and the cost of necessary site preparation.
- 36.4252 Loans for purchase of mobile home and for the acquisition of a lot.
- 36.4253 Title and lien requirements.
- 36.4254 Fees and charges.
- 36.4255 Loans for the acquisition of a lot.

SERVICING, LIQUIDATION OF SECURITY AND CLAIM

- 36.4275 Events constituting default and acceptability of partial payments.
- 36.4276 Advances and other charges.
- 36.4277 Release of security.
- 36.4279 Extensions and reamortizations.
- 36.4280 Reporting of defaults.
- 36.4281 Refunding of loans in default.
- 36.4282 Legal proceedings (notice of repossession).
- 36.4283 Foreclosure or repossession.
- 36.4284 Computation of guaranty claims.
- 36.4285 Subrogation and indemnity.
- 36.4286 Partial or total loss of guaranty.
- 36.4287 Substitution of trustees.

GUARANTY OR INSURANCE OF LOANS TO VETERANS

- 36.4300 Applicability of §§ 36.4300 to 36.4393, inclusive.
- 36.4301 Definitions.

GENERAL PROVISIONS

- 36.4302 Computation of guaranties or insurance credits.
- 36.4303 Reporting requirements.
- 36.4304 Deviations; changes of identity.
- 36.4305 Partial disbursement.
- 36.4306 Refinancing of mortgage or other lien indebtedness.
- 36.4306a Interest rate reduction refinancing loan.
- 36.4307 Joint loans.
- 36.4308 Transfer of title by borrower or maturity by demand or acceleration.
- 36.4309 Amortization.
- 36.4310 Prepayment.
- 36.4311 Interest rates.
- 36.4312 Charges and fees.

Sec.

- 36.4313 Advances and other charges.
- 36.4314 Extensions and reamortizations.
- 36.4315 Notice of default and acceptability of partial payments.
- 36.4316 Continued default.
- 36.4317 Notice of intention to foreclose.
- 36.4318 Refunding of loans in default.
- 36.4319 Legal proceedings.
- 36.4320 Sale of security.
- 36.4321 Computation of guaranty claims, subsequent accountings.
- 36.4322 Computation of indebtedness.
- 36.4323 Subrogation and indemnity.
- 36.4324 Release of security.
- 36.4325 Partial or total loss of guaranty or insurance.
- 36.4326 Hazard insurance.
- 36.4327 Substitution of trustees.
- 36.4328 Capacity of parties to contract.
- 36.4329 Geographical limits.
- 36.4330 Accounting records.
- 36.4331 Disqualification of lenders.
- 36.4332 Delivery of notice.
- 36.4333 Satisfaction of indebtedness.
- 36.4334 Incorporation by reference.
- 36.4335 Supplementary administrative action.
- 36.4336 Eligibility of loans; reasonable value requirements.
- 36.4337 [Reserved]
- 36.4338 Death or insolvency of holder.
- 36.4339 Qualification for designated fee appraisers.
- 36.4340 Restriction on designated fee appraisers.
- 36.4341 Suspension or removal of appraisers.
- 36.4342 Delegation of authority.
- 36.4343 Cooperative loans.
- 36.4344 [Reserved]
- 36.4345 Waivers, consents, and approvals; when effective.
- 36.4346 [Reserved]
- 36.4347 Minimum property and construction requirements.
- 36.4348—36.4349 [Reserved]
- 36.4350 Estate of veteran in real property.
- 36.4351 Loans, first, second, or unsecured.
- 36.4352 Tax, special assessment and other liens.
- 36.4353 Combination residential and business property.
- 36.4354 [Reserved]
- 36.4355 Supplemental loans.
- 36.4356 Condominium loans—general.
- 36.4357 Acceptable ownership arrangements and documentation.
- 36.4358 Rights and restrictions.
- 36.4359 Miscellaneous legal requirements.
- 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.
- 36.4360a Appraisal requirements.
- 36.4361 Right of the Administrator to refuse to appraise residential properties.

Sec.

- 36.4362 Requirement of construction warranty.
- 36.4363 Nondiscrimination and equal opportunity in housing certification requirements.
- 36.4364 Correction of structural defects.

LOANS UNDER 38 U.S.C. 1815

- 36.4370 Insured loan and insurance account.
- 36.4372 Transfer of insured loans.
- 36.4373 Debits and credits to insurance account under § 36.4318.
- 36.4374 Payment of insurance.
- 36.4375 Reports of insured institutions.

FEDERALLY ASSISTED CONSTRUCTION CONTRACTS—NONDISCRIMINATION IN EMPLOYMENT—EXECUTIVE ORDERS 11246 AND 11375

- 36.4390 Purpose.
- 36.4391 Applicability.
- 36.4392 Certification requirements.
- 36.4393 Complaint and hearing procedure.

ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING SPECIALLY ADAPTED HOUSING

- 36.4400 Applicability.
- 36.4401 Definitions.
- 36.4402 Eligibility.
- 36.4403 Joint ownership of housing unit.
- 36.4404 Computation of cost.
- 36.4405 Submission of proof to the Administrator.
- 36.4406 Disbursement of benefit authorized.
- 36.4407 Supplementary administrative action.
- 36.4408 Delegation of authority.
- 36.4409 Guaranteed or insured loans under 38 U.S.C. chapter 37.
- 36.4410 Allocation of the funds of the grant.

DIRECT LOANS

- 36.4500 Applicability.
- 36.4501 Definitions.
- 36.4502 Use of guaranty entitlement.
- 36.4503 Amount and amortization.
- 36.4504 Loan closing expenses.
- 36.4505 Maturity of loan.
- 36.4506 Recasting.
- 36.4507 Refinancing of mortgage or other lien indebtedness.
- 36.4508 Transfer of property by borrower.
- 36.4509 Joint loans.
- 36.4510 Prepayment, acceleration, and liquidation.
- 36.4511 Advances after loan closing.
- 36.4512 Taxes and insurance.
- 36.4513 Foreclosure and liquidation.
- 36.4514 Eligibility requirements.
- 36.4515 Estate of veteran in real property.
- 36.4516 Lien requirements.
- 36.4517 Incorporation by reference.

Sec.

- 36.4518 Supplementary administrative action.
- 36.4519 Eligible purposes and reasonable value requirements.
- 36.4520 Delegation of authority.
- 36.4521 Minimum property and construction requirements.
- 36.4522 Waivers, consents and approvals.
- 36.4523 Geographical limits.
- 36.4524 Sale of loans.
- 36.4525 Requirement of a construction warranty.
- 36.4526 Issuance of fund reservation commitments.

SALE OF LOANS, GUARANTEE OF PAYMENT

- 36.4600 Sale of loans, guarantee of payment.

GUARANTY OF LOANS TO VETERANS TO PURCHASE MOBILE HOMES AND LOTS, INCLUDING SITE PREPARATION

AUTHORITY: Sections 36.4201 to 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1819) unless otherwise noted.

SOURCE: Sections 36.4201 to 36.4287 appear at 36 FR 1253, Jan. 27, 1971, unless otherwise noted.

NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. 1819 and are not restated herein must be taken into consideration in conjunction with the § 36.4200 series.

§ 36.4201 Applicability of the § 36.4200 series.

The § 36.4200 series shall be applicable to each loan entitled to guaranty under 38 U.S.C. 1819 on or after the date of publication thereof in the FEDERAL REGISTER.

§ 36.4202 Definitions.

Wherever used in 38 U.S.C. 1819 or the § 36.4200 series, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated.

(a) *Administrator*. The Administrator of Veterans Affairs, or any employee of the Veterans Administration authorized to act in the Administrator's stead.

(b) "Date of first uncured default" means the due date of the earliest payment not fully satisfied by the proper application or available credits or deposits.

(c) "Default" means failure of a borrower to comply with the terms of a loan agreement.

(d) "Guaranty" means the obligation of the United States, assumed by virtue of 38 U.S.C. 1819, to repay a specified percentage of a loan upon default of the primary debtor, which guaranty payment shall be made after liquidation of the security for the loan and an accounting with the Administrator.

(e) "Holder" means the lender or any subsequent assignee or transferee of the guaranteed obligation.

(f) "Indebtedness" means the unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with the § 36.4200 series, which have been paid and debited to the loan account. Unpaid late charges may not be included in the indebtedness.

(g) "Lender" means the payee or assignee or transferee of an obligation at the time it is guaranteed.

(h) "Lien" means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, security instruments, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

(i) "Loan" means unpaid principal balance plus unpaid earned interest due under the terms of the obligation.

(j) "Lot" means a parcel of land acceptable to the Administrator as a mobile home site.

(k) "Manufacturer's invoice cost" means that figure shown on a document acceptable in form and content to the Administrator issued by the manufacturer which represents the wholesale price of a specifically identified mobile home including any furnishings, equipment and accessories installed by the manufacturer, which document is certified as the true manufacturer's invoice for that particular

mobile home and which separately states the amount of freight or transportation costs charged to the dealer, if any.

(l) [Reserved]

(m) *Mobile home*. A movable dwelling unit designed and constructed for year-round occupancy on land by a single family, which dwelling unit contains permanent eating, cooking, sleeping, and sanitary facilities. A double-wide mobile home is a movable dwelling designed for occupancy by one family consisting of (1) two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit.

(n) "Necessary site preparation" means those improvements essential to render a mobile home site acceptable to the Administrator including, but not limited to, the installation of utility connections, sanitary facilities and paving, and the construction of a suitable pad.

(o) *New mobile home*. A mobile home which, at the time of purchase by the veteran-borrower, has not been previously occupied and was manufactured less than 1 year prior to the date of application to the Veterans Administration for loan guaranty.

(p) "Reasonable value" means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

(q) "Repossession—repossessed" means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

(r) "Resale" means sale of the property by the holder to a third party for the purpose of liquidating the security for the loan after having acquired the property by repossession, public or private sale, or by any other means.

(s) *Used mobile home.* A mobile home which has been previously occupied or manufactured more than 1 year prior to date of loan application.

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13212, Mar. 25, 1975; 43 FR 37197, Aug. 22, 1978; 44 FR 22723, Apr. 17, 1979]

GENERAL PROVISIONS

§ 36.4203 Eligibility of the veteran for the mobile home loan benefit under 38 U.S.C. 1819.

(a) To be eligible for the mobile home loan benefit a veteran must have loan guaranty entitlement for mobile home purposes available for use. Notwithstanding the provisions of § 36.4205(e), the Administrator may exclude the amount of guaranty entitlement used for any guaranteed mobile home loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2) The loan has been repaid in full, or the Administrator has been released from liability as to the loan, or if the Administrator has suffered a loss on said loan, such loss has been paid in full; or

(3) An immediate veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of chapter 37, title 38, U.S.C.

The Administrator may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraph (a) (1) or (2) of this section.

(b) A veteran may use his or her remaining home loan guaranty entitlement for any purpose authorized by 38 U.S.C. 1810, 1811, or 1819 except that a veteran who has purchased a mobile home unit may not purchase a second mobile home unit until the unit which secured the first loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

(c) The available entitlement of a veteran will be determined by the Administrator as of the date of receipt of an application for guaranty of a mobile home loan or loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Veterans Administration. Eligibility derived from the most recent period of service (1) shall cancel any unused entitlement derived from any earlier period of service, and (2) shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan—

(i) On property which the veteran owns at the time of application; or

(ii) As to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Administrator the resulting indebtedness of the veteran to the United States has been paid in full.

Provided, That if the Administrator issues or has issued a certificate of commitment covering the loan described in the application for guaranty or in the loan report, the amount and percentage of guaranty contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Administrator in the meantime and prior to the issuance of the evidence of guaranty shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Administrator will be deemed to have incurred actual loss on a guaranteed or insured loan if the Administrator has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Administrator is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Administrator will be deemed to have incurred an

actual loss if the loan is in default. (38 U.S.C. 1819(b) (1) and (2) and (c)(4))

[44 FR 22723, Apr. 17, 1979]

§ 36.4204 Loan purposes, maximum loan amounts and terms.

(a) A mobile home loan may be guaranteed if the loan is for one of the following purposes:

(1) To purchase a lot on which to place a mobile home already owned by the veteran;

(2) To purchase a single-wide mobile home;

(3) To purchase a single-wide mobile home and a lot on which to place such home;

(4) To purchase a double-wide mobile home;

(5) To purchase a double-wide mobile home and lot on which to place such home or;

(6) To refinance in accordance with § 36.4223 an existing mobile home loan guaranteed, insured or made under subparagraphs (a) (1) through (5) of this section. (38 U.S.C. 1819(a)(1))

(b) A loan for any of the purposes described in paragraphs (a) (1) through (5) of this section may include an amount determined by the Administrator to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the costs of installing utility connections and sanitary facilities, of paving, and of constructing a suitable pad for the mobile home.

(c) The maximum permissible loan terms shall not exceed:

(1) 20 years and 32 days in the case of a loan to purchase a single-wide mobile home or a single-wide mobile home and lot;

(2) 15 years and 32 days in the case of a loan to purchase a lot on which to place a mobile home already owned by the veteran;

(3) 23 years and 32 days in the case of a loan to purchase a double-wide mobile home, or 25 years and 32 days in the case of a loan to purchase a double-wide mobile home and lot; or

(4) In the case of a used mobile home the maximum term set forth in paragraph (c) (1) or (3) of this section or the remaining physical life expectancy of the unit as established by the

Administrator, whichever is less. (38 U.S.C. 1819(a) (1) and (2), (d)(1), (e)(4)(B))

(d) The loan amount in an individual case shall not exceed the following:

(1) In the case of a loan to purchase a new mobile home unit only, the loan amount shall not exceed the sum of the following:

(i) 120 percent of the figure produced by the following computation:

Subtract from the manufacturer's invoice cost the manufacturer's invoice cost of any components (furnishings, accessories, equipment) removed from the unit by the dealer. To the remainder add the dealer's cost for any components added by such dealer. The sum so obtained shall be the figure to be multiplied by the specified percentage.

(ii) 100 percent of the actual amount of fees and charges permitted in § 36.4232.

(2) In the case of a loan to purchase a new mobile home unit plus the cost of necessary site preparation where the veteran owns the lot, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus such costs of necessary site preparation as are approved by the Administrator.

(3) In the case of a loan to purchase a new mobile home unit plus the purchase of an undeveloped lot on which to place such home plus the cost of necessary site preparation, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the undeveloped lot as determined by the Administrator plus such costs of necessary site preparation as are approved by the Administrator.

(4) In the case of a loan to purchase a new mobile home unit plus the cost of a suitably developed lot on which to place such home, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the developed lot as determined by the Administrator.

(5) In the case of a loan to purchase a lot upon which will be placed a mobile home owned by the veteran the loan is limited to the reasonable value of a developed lot or the reason-

able value plus such amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation for an undeveloped lot.

(6) In the case of a used mobile home the maximum loan may not exceed the reasonable value as established by the Administrator, plus:

(i) Actual fees or charges for required recordation of documents;

(ii) The amount of any documentary stamp taxes levied on the transaction;

(iii) The amount of State and local taxes levied on the transaction; and

(iv) The premium for customary physical damage insurance and vendor's single interest coverage on the mobile home for an initial policy term of not to exceed 5 years.

(7) In the case of an interest rate reduction refinancing loan (38 U.S.C. 1819(a)(1)(F)) the maximum loan may not exceed:

(i) The balance of the Veterans Administration loan being refinanced;

(ii) Closing costs (excluding prepaid items) as authorized by § 36.4232 or 36.4254, as appropriate; and

(iii) Allowable discounts provided:

(A) The loan is submitted to the Administrator for prior approval;

(B) The amount of discount is disclosed to the Administrator and the veteran prior to the issuance of the certificate of commitment by the Administrator. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment has been issued without the approval of the Administrator;

(C) The discount has been determined by the Administrator to be reasonable in amount; and

(D) All powers of the Administrator under this subparagraph, except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4221(b). The power of the Administrator to approve an increase in the discount after the commitment is issued is delegated to those officials designated by § 36.4220(a). (38 U.S.C. 1819(a)(4) and (g))

(e) The cost of the transaction which will not be paid from the proceeds of the loan must be paid by the

veteran in cash from the veteran's own resources. Except for interest rate reduction refinancing loans pursuant to paragraph (a)(6) of this section closing costs and prepaid items incident to the real estate portion of any mobile home loan must be paid in cash and may not be included in the loan amount. Prepaid items must be paid in cash and may not be included in the loan amount when a veteran obtains an interest rate reduction refinancing loan.

[44 FR 22723, Apr. 17, 1979, as amended at 46 FR 43669, Aug. 31, 1981; 47 FR 12346, Mar. 23, 1982]

§ 36.4205 Computation of guaranty.

(a) The amount of guaranty in respect to a loan guaranteed under 38 U.S.C. 1819 shall be fifty (50) percent of the original principal amount of the loan or \$20,000 whichever is less. With respect to a loan guaranteed under 38 U.S.C. 1819(a)(1)(F), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced.

(b) Subject to the provisions of paragraph (c) of § 36.4203, the following formulas will determine the amount of guaranty entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from \$27,500. The sum remaining is the amount of available entitlement for use not to exceed \$20,000 for mobile home purposes.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from \$27,500. The sum remaining is the amount of available entitlement for use not to exceed \$20,000 for mobile home purposes.

(3) If a veteran previously secured a mobile home loan, the amount of entitlement used for mobile home purposes is subtracted from \$27,500. The sum remaining is the amount of available entitlement for use for home loan purposes only. To determine the amount of additional entitlement available for mobile home purposes, the amount of entitlement previously used for mobile home purposes is sub-

tracted from \$20,000. The sum remaining is the amount of available entitlement for use for mobile home purposes.

(c) For the purpose of computing the remaining guaranty benefit to which a veteran is entitled, mobile home and mobile home lot loans guaranteed prior to October 1, 1978, shall be taken into consideration as if made subsequent thereto, and the veteran's entitlement will be reduced by the amount of the Administrator's guaranty issued in the particular loan transaction.

(d) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty.

(e) The amount of any guaranty for a mobile home or mobile home lot loan shall be charged against the original or remainder of the borrower's guaranty benefit available for mobile home purposes. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum guaranty legally available to a veteran for mobile home purposes shall have been granted, no further guaranty for mobile home purposes shall be available to the veteran.

(f)(1) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Administrator, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity. (38 U.S.C. 1801(a)(2), 1819(c)(4))

(2) For the purpose of obtaining an interest rate reduction refinancing loan pursuant to 38 U.S.C.

1819(a)(1)(F), an unmarried surviving spouse who was a co-obligor under an existing Veterans Administration guaranteed loan shall be considered to be eligible for the 38 U.S.C. 1819(a)(1)(F) benefit. (38 U.S.C. 1819(a)(4)(C))

(g) Any evidence of guaranty issued by the Administrator in respect to such loan shall be conclusive evidence of the eligibility of the loan for guaranty and of the amount of such guaranty *Provided, however*, That the Administrator may establish against the original lender, defenses based on fraud or material misrepresentation and that the Administrator may by regulations in force at the date of such issuance establish partial defenses to the amount payable on the guaranty.

[44 FR 22724, Apr. 17, 1979, as amended at 46 FR 43669, Aug. 31, 1981]

§ 36.4206 Income, credit, occupancy, and nondiscrimination requirements.

(a) Except for refinancing loans pursuant to 38 U.S.C. 1819(a)(1)(F), no loan shall be guaranteed unless the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, taking into account the purpose of this program to make available lower cost housing to low and lower income veterans, especially those who have been recently discharged or released from active military, naval, or air service, who may not have previously established credit ratings;

(b) No loan shall be guaranteed pursuant to 38 U.S.C. 1819(a)(1) unless:

(1) The veteran certifies, in such form as the Administrator shall prescribe, that he or she will personally occupy the property as his or her home. For the purposes of this section, the words "personally occupy the property as his or her home" mean that the veteran as of the date of his or her certification actually lives in the property personally as his or her residence or actually intends upon completion of the loan and acquisition of the mobile home to move into the home personally within a reasonable time and to utilize the home as his or her residence.

(2) The veteran certifies, in such form as the Administrator shall prescribe that:

(i) Neither the veteran, nor anyone authorized to act for the veteran, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex or national origin;

(ii) The veteran recognizes that any restrictive covenant on the property relating to race, color, sex, religion, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(iii) The veteran understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. district court against any person responsible for a violation of the applicable law.

[46 FR 43670, Aug. 31, 1981]

§ 36.4207 Mobile home standards.

To qualify for purchase with a guaranteed loan a mobile home must:

(a) Meet the following dimensional requirements.

(1) A single-wide unit must be a minimum of ten (10) feet wide and have a minimum floor area of four hundred (400) square feet.

(2) A double-wide unit, when assembled, must be a minimum of twenty (20) feet wide and have a minimum floor area of seven hundred (700) square feet.

(b) Be so constructed as to be towed on its own chassis and undercarriage and/or independent undercarriage;

(c) Contain living facilities for year around occupancy by one family, including permanent provisions for heat, sleeping, cooking, and sanitation; and

(d) Comply with the specifications in effect at the time the loan is made that are prescribed by the Administrator. (38 U.S.C. 1819(h)(1))

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13213, Mar. 25, 1975; 44 FR 22725, Apr. 17, 1979]

§ 36.4208 Mobile home location standards.

(a) Any rental site on which a mobile home to be purchased with a

guaranteed loan will be placed must qualify as an acceptable rental site as follows:

(1) Be located within a mobile home park or subdivision which is acceptable to the Veterans Administration; or

(2) Be a site which is not within a mobile home park or subdivision provided that (i) the site is determined by the Veterans Administration to be an acceptable rental site, or (ii) in the absence of a determination by the Veterans Administration in respect to such site the mobile home purchaser and the dealer certify to the Administrator as follows:

(a) Placement of the mobile home on the site or lot is not a violation of zoning laws or other local requirements applicable to mobile homes;

(b) The site or lot is served by water and sanitary facilities which are approved by the local public authority and which are acceptable to the Veterans Administration;

(c) The site or lot is served by an all-weather street or road;

(d) The site or lot is not known to be subject to conditions that may be hazardous to the health or safety of the mobile home occupants or that may endanger the mobile home; and

(e) The site is free from, and the location of the mobile home thereon will not substantially contribute to, adverse scenic or environmental conditions.

(b) No mobile home purchased with a guaranteed loan may be placed on a lot owned by an eligible veteran or on a lot to be purchased or improved with the proceeds of a guaranteed mobile home loan unless the lot owned or to be so purchased or improved is determined by the Veterans Administration to be an acceptable mobile home site.

(c) A mobile home park or subdivision which is not approved by the Federal Housing Administration will be acceptable to the Veterans Administration for the purpose of 38 U.S.C. 1819 if the Administrator determines that the park or subdivision, whether existing or proposed, (1) is designed to encourage the maintenance and development of mobile home sites which will be free from, and not substantially contribute to, adverse scenic and en-

vironmental conditions, and (2) complies otherwise with the applicable standards for planning, construction, and general acceptability prescribed by the Administrator.

§ 36.4209 Reporting requirements.

(a) Each loan proposed for guaranty under 38 U.S.C. 1819 shall, unless otherwise provided in the § 36.4200 series, be submitted to the Administrator for approval prior to closing. The Administrator upon determining any such proposed loan to be eligible for guaranty will issue a certificate of commitment.

(b) Except as provided in paragraph (c) of this section, a certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing such fact and:

(1) That the loan conforms to the terms of the certificate of commitment;

(2) The identity of all property purchased therewith;

(3) That all property purchased with the proceeds of the loan has been encumbered as required by the § 36.4200 series;

(4) In respect to any property purchased with the loan proceeds as to which the Administrator issued a certificate of reasonable value which was conditioned upon completion of any construction, repairs, alterations or improvements not inspected and approved subsequent to completion by a compliance inspector designated by the Administrator that such construction, repairs, alterations or improvements have been completed according to the plans and specifications upon which such reasonable value was based; and

(5) That the loan conforms otherwise to the applicable provisions of 38 U.S.C. chapter 37 and § 36.4200 series.

(c) A deviation of more than five (5) percent between the estimates upon which the certificate of commitment was issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property

acquired by the veteran with the loan proceeds will invalidate the certificate of commitment, unless such deviation or change is approved by the Administrator.

(d) Upon the failure of the lender to report in accordance with paragraph (b) of this section, the certificate of commitment shall have no further effect; *Provided, nevertheless*, That if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Administrator, notwithstanding the report is received after the date otherwise required.

(e) Subject to compliance with the regulations concerning guaranty of mobile home loans to veterans, the Certificate of Guaranty will be issuable within the available entitlement of the veteran on the basis of the loan reported, except for refinancing loans for interest rate reductions. No certificate of commitment shall be issued, and no loan shall be guaranteed, unless the lender, the veteran, and the loan are shown to be eligible; nor shall guaranty be issued on any mobile home loan unless the Administrator determines that there has been compliance by the veteran with the certification requirements of 38 U.S.C. 1819(e)(5), (38 U.S.C. 1819(a)(4), (c)(2), (e)(5))

(f) Any amount of the loan that is disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty.

(g) Approval by the Administrator pursuant to 38 U.S.C. 1819(c)(1) is required before a lender may close mobile home loans or mobile home lot loans on the automatic basis. Evidence of guaranty will be issuable if the loan closed on the automatic basis is reported to the Administrator within 60 days of full disbursement, and upon certification of the lender that no default exists thereunder which has continued for more than 30 days and that the loan complies with paragraphs (b)(2), (3), (4), and (5), (e), and (f) of this section. Upon the failure of the lender to report in accordance with this paragraph the loan will not be eligible for guaranty unless the lender submits with the report a certification that the loan is not in default and an

explanation as to why the loan was not timely reported. (38 U.S.C. 1819 (c)(1) and (g))

[36 FR 1253, Jan. 27, 1971, as amended at 44 FR 22725, Apr. 17, 1979; 46 FR 43670, Aug. 31, 1981]

§ 36.4210 Joint loans.

(a) Except as provided in paragraph (b) of this section, the prior approval of the Administrator is required in respect to any mobile home loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only. The amount of the guaranty shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. chapter 37 and the regulations concerning guaranty of mobile home loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of property shall not require prior approval or preclude the issuance of a guaranty based upon the entire amount of the loan. If both spouses be eligible veterans, either or both, within permissible maxima, may utilize available guaranty entitlement.

(c) For the purpose of determining the rights and the liabilities of the Administrator with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran. (38 U.S.C. 1803(c)(1))

[44 FR 22725, Apr. 17, 1979]

§ 36.4211 Amortization—prepayment.

(a) To be eligible for guaranty under 38 U.S.C. 1819 a loan shall be amortized fully within the term of the loan in accordance with any generally recognized plan of amortization requiring approximately equal monthly payments. The loan shall not be payable on demand or at sight or presentation, or at a time not specified or computable from the language in the evidence of indebtedness, or on a renewal basis at the option of the holder. The first payment may be deferred not longer than 2 months from the date the loan is closed.

(b) No guaranteed loan security instrument shall contain any provision giving the holder a right to declare the loan due or otherwise to declare a default if the holder "shall feel insecure" or upon the occurrence of any similar condition at the holder's option, without regard to any act or omission by the debtor.

(c) The debtor shall have the right, without penalty or fee, to prepay all or not less than one installment of the indebtedness at any time. Credit for any partial prepayment made on other than an installment due date may be postponed to the next installment due date. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default. Any prepayment in full of the indebtedness (unpaid principal balance plus earned interest) shall be credited on the date received. In determining the amount required to prepay the indebtedness in full the holder of the loan shall exclude all unearned interest or discount.

(d) Subject to paragraph (a) of this section any amounts which under the

terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in § 36.4204 shall automatically fall due on such date.

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective March 2, 1982, 17½ percent simple interest per annum for a loan which finances the purchase of a mobile home unit only.

(2) Effective March 2, 1982, 17 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective March 2, 1982, 17 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a mobile home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the mobile home.

(b) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount provided the rate as so computed does not exceed the applicable maximum simple interest rate(s) specified in paragraph (a) of this section.

(c) A late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of the interest rate limitations specified in paragraph (a) of this section. Late charges must be collected from the borrower as such and may not be deducted from regular installments.

(d) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1819(a)(1)(F)) may specify an interest rate in excess of the rate specified in paragraph (a)(1), or (2), or (3) of this section provided the interest rate of the refinancing loan is less than the interest rate of the Veterans

Administration loan being refinanced. (38 U.S.C. 1819 (f) and (g))

(38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1819(f) and (g))

[36 FR 1253, Jan. 27, 1971, as amended at 45 FR 43670, Aug. 31, 1981; 47 FR 9827, Mar. 8, 1982]

§ 36.4213 Capacity of parties.

Nothing in the § 36.4200 series shall be construed to relieve any lender of responsibility for any loss caused by lack of legal capacity of any person to contract, sell, convey or encumber, or by the existence of other legal disability or defects invalidating or rendering unenforceable in whole or in part either the loan obligation or the security therefor.

§ 36.4214 Geographical limits.

The site for any mobile home purchased with a guaranteed loan must be located within the United States of America, which for the purposes of 38 U.S.C. 1819 comprises the several States, the Territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

[46 FR 43670, Aug. 31, 1981]

§ 36.4215 Accounting records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Administrator ceases to be liable as guarantor of the loan. For the purpose of any accounting with the Administrator or computation of claim against the Administrator, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The Administrator has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a holder pertaining to loans guaranteed by the Administrator.

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13214, Mar. 25, 1975]

§ 36.4216 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty of loans or from the right to the guaranty in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4221(b) find that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed mobile home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. 1819, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned.

(b) Where notice of intention to suspend is furnished a lender, the notice shall state the charges against the lender and the specifications on which the charges are based. Such notice shall also advise the lender that no later than 20 days from the date of the receipt of the notice it may file

written answer to the charges with the Director and, if desired, may also file a written request that lender be permitted to appear before the Veterans Administration and state why suspension should not be effected. In the event the lender does not file written answer to the charges against it and does not make or request permission to make an appearance before the Veterans Administration within the time specified, suspension may be effected immediately, without further authorization, by the Director who will advise the Chief Benefits Director of the action taken.

(c) If an appearance before the Veterans Administration is requested by the lender the Director will arrange for and notify the lender of the time and place thereof and will appoint a committee of three Veterans Administration employees to hear the lender's statement. The District Counsel or designee will represent the Veterans Administration at such appearance. The proceedings of the committee will be informal. The lender will be informed of the charges and specifications which constitute the basis of the contemplated suspension and will be afforded an opportunity to state either orally or in writing why suspension should not be effected. Written or oral statements of the lender, or its officers, agents, or representatives other than counsel may be required by the District Counsel or designee to be made under oath if in the discretion of the District Counsel or designee the nature of the statement is such as to make that procedure advisable. In the event an oral statement is made under oath, a verbatim transcript of such statement will be made. Authority is hereby delegated to the District Counsel or designee to administer oaths to each party making the statement under oath.

(d) If within the specified time, written answer is filed with the Director or the lender makes an appearance, the Director will hold the suspension in abeyance and submit a full report to the Chief Benefits Director including recommendations as to the action to be taken in the case and will await instructions of the Chief Benefits Director before proceeding further.

(e) Where suspension is effected, the lender will be advised in writing of the effective date of the suspension and, unless such was previously furnished, will be given written notice of the charges against the lender and the specifications on which such charges are based. Any lender who is suspended shall have the right to apply to the Chief Benefits Director for termination or modification of the suspension and, except when the suspension is based upon action taken by the Secretary of Housing and Urban Development, shall also have the right to apply to the Chief Benefits Director, for a formal hearing at which opportunity shall be afforded to show why suspension should be modified or terminated. The Chief Benefits Director may postpone the holding of a hearing for a reasonable period in any case in which the Department of Justice or U.S. Attorney advises or requests postponement pending the trial of a criminal or civil case or the institution of criminal or civil proceedings against the lender. In the absence of such request, the Chief Benefits Director, as soon as it is feasible to do so, shall designate such time and place as may be appropriate for such hearing, shall notify the lender thereof, and shall appoint not less than three persons, who shall constitute the board, to conduct the hearing. The District Counsel or designee shall represent the Veterans Administration. Authority is hereby delegated to the chairman of the board designated to conduct such hearing to administer oaths to witnesses. The Director may issue subpoenas for witnesses or records as provided in 38 U.S.C. 3311. The lender shall have the right to appear at such hearing in person or by attorney, or both, and to introduce evidence showing why such suspension should be modified or terminated. If the Veterans Administration has knowledge of a pending or contemplated civil or criminal action by the United States against the lender, arising from the facts on which the suspension of the lender was based, the District Counsel of the regional office concerned will inform the responsible U.S. Attorney of the date and place of hearing and

keep said U.S. Attorney advised of all developments.

(f) As soon as is practicable after the conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The lender will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. The lender shall have the right within 14 days after receipt of such transcript and statement to file with the Chief Benefits Director a brief of either, or both, facts and law.

(g) Upon receipt of the transcript of the hearing, the findings and recommendations of the board, and the brief of the lender, if one is filed, the Chief Benefits Director shall make a determination in the case, basing the decision on such record. Written notice of such determination shall be given to the lender. The lender shall have the right to appeal such decision to the Administrator by giving notice in writing to the Chief Benefits Director within 10 days after the receipt of notice of such determination. In the event of such appeal, the Administrator will decide the matter finally on the record and will notify the lender of the Administrator's decision in writing. If the lender does not appeal to the Administrator within the period specified, the determination by the Chief Benefits Director shall be final.

(h) Except where acquisition is pursuant to a binding contract antedating the suspension, the purchase of a guaranteed loan by a lender after the date of its suspension shall cancel the guaranty on such loan: *Provided*, The notice to the lender of the suspension expressly bars such lender from acquiring by purchase loans guaranteed by the Administrator.

(i) If after determination by the Chief Benefits Director or the Administrator, as provided in paragraph (g) of this section, the suspension is terminated, all rights and interest of the lender shall be restored. However, any lender suspended by reason of action taken by the Federal Housing Commissioner is not afforded the rights under paragraph (g) of this section and the suspension in any such case will be terminated by the Chief Bene-

fits Director only if the lender furnishes satisfactory evidence of reinstatement by the Federal Housing Commissioner.

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13214, Mar. 25, 1975; 46 FR 43670, Aug. 31, 1981]

§ 36.4217 Delivery of notice.

Any notice required by the § 36.4200 series to be given the Administrator must be in writing, and delivered, by mail or otherwise, to the Veterans Administration office at which the guaranty was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by the setting forth the name of the original veteran-obligor and the file number assigned to the case by the Administrator, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by the § 36.4200 series. This section does not apply to legal process. (See § 36.4282)

§ 36.4218 Payment in full; termination of guaranty.

Upon full satisfaction of a guaranteed loan by payment or otherwise the instrument evidencing the guaranty shall be returned to the Veterans Administration office issuing the same with the holder's cancellation or endorsement of release thereon.

§ 36.4219 Incorporation by reference.

Veterans Administration regulations issued under 38 U.S.C. 1819, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

§ 36.4220 Substantive and procedural requirements; waiver.

(a) Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty of mobile home loans to veterans, the Chief Benefits Director, or the Director, Loan Guaranty

Service, within the limitations and conditions prescribed by the Administrator, is hereby authorized, if the Chief Benefits Director or Director, Loan Guaranty Service finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4221 is hereby authorized to grant similar relief if the designated employee finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(1) The requirement in § 36.4209(b) that a lender originating a loan under a certificate of commitment report the loan for issuance of guaranty evidence within 60 days following actual payment of the full proceeds of the loan. In such cases it is not necessary that a finding be made that the loan is not in default.

(2) The requirement in § 36.4279 that a holder promptly forward an advice of the terms of any agreement effecting a reamortization or extension of a loan.

(3) The requirement in § 36.4280 concerning the giving of notice of default.

(4) The requirement in § 36.4280 that a holder give 30 days advance notice of its intention to foreclose or repossess the security.

(5) The requirement in § 36.4282 that a holder give notice of repossession of personal property within 10 days after such repossession has occurred.

(b) No waiver, consent, or approval required or authorized by the regulations concerning guaranty of loans to veterans shall be valid unless in writing signed by the Administrator or the employee designated in § 36.4221.

[36 FR 1253, Jan. 27, 1971, as amended at 46 FR 43670, Aug. 31, 1981]

§ 36.4221 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Veterans Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to the guaranty of mobile home loans and the rights and liabilities arising therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of 38 U.S.C. 1820(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Administrator, evidence of guaranty and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property, or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b) Designated positions:

Chief Benefits Director.
Director, Loan Guaranty Service.
Director, Regional Office.
Director, Medical and Regional Office Center.
Director, VA Regional Office and Insurance Center.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be re-delegated.

(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Administrator under 38 U.S.C. 210(c) or 1815(b) or to sue, or enter appearance for and on behalf of the Administrator, or confess judgment against the Administrator in any court without prior authorization; or (2) to include the authority to exercise those powers delegated to the Chief Benefits Director, or the Director, Loan Guaranty Service, under § 36.4220: *Provided*, That anything in the regulations concerning guaranty of loans to veterans to the contrary notwithstanding, any evidence of guaranty issued on or after January 27, 1971 by any of the employees designated in paragraph (b) of this section or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Administrator, subject to the defenses reserved in 38 U.S.C. 1821.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours. (38 U.S.C. 210(c)(1), 1820(a)(5))

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13214, Mar. 25, 1975; 44 FR 16014, Mar. 16, 1979; 45 FR 21243, Apr. 1, 1980; 46 FR 43671, Aug. 31, 1981]

§ 36.4222 Hazard insurance.

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the

security against the risks or hazards to which it may be subjected to the extent customary in the locality. Flood insurance will be required, including coverage of the contents to the extent such contents are security for the loan, in respect to any loan closed on and after March 2, 1974, if the security is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and in which the sale of flood insurance is available under the national flood insurance program. The amount of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the national flood insurance program, whichever is less. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.

[39 FR 7784, Feb. 28, 1974]

§ 36.4223 Interest rate reduction refinancing loan.

(a) A veteran may refinance [38 U.S.C. 1819(a)(1)(F)] an existing Veterans Administration guaranteed loan to reduce the interest rate payable on the Veterans Administration loan provided the following requirements are met:

(1) The loan must be submitted to the Administrator for prior approval;

(2) The loan must be secured by the same real and/or personal property as the loan being refinanced and the mobile home (or a mobile home on a lot) must be owned and occupied by the veteran as such veteran's home;

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized in § 36.4232 or § 36.4254, as appropriate, and a reasonable discount as authorized in § 36.4204(d)(7);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1819(a)(1)(F) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan 38 U.S.C. 1819(a)(1)(F) may not exceed the original term of the loan being refinanced.

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement for mobile home purposes available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement for mobile home purposes shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1819(a)(1)(A) through (E) and subsequently transferred for use on an interest rate reduction refinancing loan 38 U.S.C. 1819(a)(1)(F) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loan on the same property meets the requirements of § 36.4203(a).

(c) Title to the security which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4234, and/or § 36.4253, as appropriate. (38 U.S.C. 1819(a)(1)(F) and (4))

[46 FR 43671, Aug. 31, 1981]

FINANCING MOBILE HOME UNITS

§ 36.4231 Warranty requirements.

(a) When a new mobile home purchased with financing guaranteed under 38 U.S.C. 1819 is delivered to the veteran-borrower he or she will be supplied a written warranty by the manufacturer in the form and content prescribed by the Administrator. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument, and the warranty instrument will so provide. No evidence of guaranty shall be issued by the Administrator unless a copy of such warranty duly received by the

purchaser is submitted with the loan papers

(b) The Administrator may from time to time conduct inspection of the manufacturing process of mobile homes constructed for sale to veterans and onsite inspections of mobile homes purchased with the assistance of loans guaranteed under 38 U.S.C. 1819.

(c) When a used mobile home is purchased from a mobile home dealer with financing guaranteed under 38 U.S.C. 1819 the veteran-borrower must be supplied with a written warranty by the mobile home dealer in the form and content prescribed by the Administrator. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument, and the warranty instrument will so provide. No evidence of guaranty shall be issued by the Administrator unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 1514, Jan. 8, 1975; 40 FR 13215, Mar. 25, 1975]

§ 36.4232 Allowable fees and charges; mobile home unit.

(a) Incident to the origination of a guaranteed loan for the purchase of a mobile home unit only, no charge shall be made against, or paid by, the veteran-borrower without the express prior approval of the Administrator except as follows:

(1) Actual fees or charges for required recordation of documents;

(2) The amount of any documentary stamp taxes levied on the transaction;

(3) The amount of State and local taxes levied on the transaction;

(4) The premium for customary physical damage insurance and vendor's single interest coverage on the mobile home for an initial policy term of not to exceed five (5) years and;

(5) For the purpose of obtaining a refinancing loan for interest rate reduction, the cost of a credit report and an appraisal. (38 U.S.C. 1819(a)(4)(A) and (g))

(b) Any charge against the borrower properly made under paragraph (a) of

this section may be included in the loan and paid out of the proceeds of the loan. (38 U.S.C. 1819(g))

(c)(1) Costs of a credit report (except for 38 U.S.C. 1819(a)(1)(F) refinancing loans), such additional insurance as the veteran may desire, and any other expenses normally charged to a mobile home purchaser under local customs may be paid by the borrower other than from the loan proceeds.

(2) For the purchase of a used mobile home unit, the fee of a Veterans Administration appraiser and of compliance inspectors designated by the Veterans Administration, except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender, may be paid by the borrower from other than the loan proceeds. (38 U.S.C. 1819(e)(4) and (g))

(d) Subject to the limitations set forth in this section, the following may be included in the loan made for the purchase of a new (not used) mobile home unit and paid out of the proceeds of the loan:

(1) The actual cost of transportation or freight not to exceed \$400 for a single-wide mobile home or \$600 for a double-wide mobile home;

(2) Setup charges for installing the mobile home on site not to exceed \$400 for a single-wide mobile home or \$800 for a double-wide mobile home. (38 U.S.C. 1819(g))

If the actual costs exceed the limitations in this section, the veteran must certify that any excess cost has been paid in cash from the veteran's own resources without borrowing.

[36 FR 1253, Jan. 27, 1971, as amended at 40 FR 1514, Jan. 8, 1975; 44 FR 16014, Mar. 16, 1979; 46 FR 43671, Aug. 31, 1981]

§ 36.4233 Suspension of manufacturers.

(a) The Administrator may refuse to guarantee loans (1) in respect to any mobile homes constructed by any manufacturer who refuses to permit the inspections provided for in § 36.4231, or (2) in respect to any mobile homes constructed by a manufacturer as to whose mobile homes the Administrator has made a determination of nonconformity to the structural standards prescribed in § 36.4207, or

(3) in respect to any mobile homes constructed by a manufacturer who fails or is unable to discharge the obligations under the warranty required by the regulations in the § 36.4200 series to be issued by such manufacturer.

(b) Any manufacturer affected by such refusal to guarantee loans shall have the right within 10 days after receipt of written notice of such refusal to file with the Administrator, by registered mail, a request for a hearing. Upon receipt of such request, the Chief Benefits Director shall, as promptly as deemed feasible, designate a time and place appropriate for such hearing and shall appoint one or more persons who shall constitute a board to conduct the hearing. The person or persons requesting such hearing shall be afforded full opportunity to appear at the hearing in person, or by counsel, or both, and to introduce evidence showing why the sanction should be terminated or modified. Authority is hereby granted to the persons designated to conduct the hearing to administer oaths to witnesses.

(c) As soon as is practicable after conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The person requesting the hearing will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. Such person shall have the right within 14 days after receipt of such copy to file with the Chief Benefits Director a brief of either, or both, facts and law.

(d) Upon receipt of the findings and recommendations of the hearing board and the brief of the person requesting the hearing, if a brief is filed, the Chief Benefits Director shall make a determination in the case; i.e., whether the refusal to guarantee or make loans as originally imposed is continued, modified, or terminated, and what terms or conditions, if any, are imposed for termination or modification. Notice of such determination shall be given to the person requesting the hearing. Such person shall have the right to appeal such decision to the Administrator within 30 days after

the date of receipt of such notice. In the event of an appeal, the Administrator will decide the matter finally and will notify the person who filed the appeal of the decision.

[36 FR 1253, Jan. 27, 1971, as amended at 46 FR 43671, Aug. 31, 1981]

§ 36.4234 Title and lien requirements.

(a) The interest in the mobile home acquired by the veteran at the time of purchase shall be either:

(1) Legal title evidenced by such document as is customarily issued to the purchaser of a mobile home in the jurisdiction in which the mobile home is initially sited, or

(2) A full possessory interest convertible into a legal title conforming to paragraph (a)(1) of this section upon payment in full of the guaranteed loan.

(b) The loan must be secured by a properly recorded financing statement and security agreement or other security instrument that creates a first lien on or equivalent security interest in the mobile home and all of the furnishings, equipment, and accessories paid for in whole or in part out of the loan proceeds.

(c) It is the responsibility of the lender that the veteran initially obtains an interest in the mobile home meeting the requirements of paragraph (a) of this section and to obtain and retain a security interest meeting the requirements of paragraph (b) of this section.

[36 FR 1253, Jan. 27, 1971, as amended at 46 FR 43671, Aug. 31, 1981]

§ 36.4235 Suspension of dealers and mobile home park operators.

(a) The Administrator may refuse to approve as acceptable any site in a mobile home park or subdivision owned or operated by any person whose rental or sale methods, procedures, requirements, or practices are determined by the Administrator to be unfair or prejudicial to veterans renting or purchasing such sites. The Administrator may also refuse to guarantee loans for veterans to purchase mobile homes offered for sale by any dealer if substantial deficiencies have been discovered in such homes, or if

the Administrator determines that there has been a failure or indicated inability of the dealer to discharge contractual liabilities to veterans, or that the type of contract of sale or methods, procedures, or practices pursued by the dealer in the marketing of such properties have been unfair or prejudicial to veteran purchasers.

(b) Any person or firm suspended pursuant to paragraph (a) of this section shall have the right within 10 days after receipt of written notice of such refusal to file with the Administrator, by registered mail, a request for a hearing. Upon receipt of such request, the Chief Benefits Director shall, as promptly as deemed feasible, designate a time and place as appropriate for such hearing and shall appoint one or more persons who shall constitute a board to conduct the hearing. The person or persons requesting such hearing shall be afforded full opportunity to appear at the hearing in person, or by counsel, or both, and to introduce evidence showing why the sanction should be terminated or modified. Authority is hereby granted to the persons designated to conduct the hearing to administer oaths to witnesses.

(c) As soon as is practicable after conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The person requesting the hearing will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. Such person shall have the right within 14 days after receipt of such copy to file with the Chief Benefits Director a brief of either or both, facts and law.

(d) Upon receipt of the findings and recommendations of the hearing board and the brief of the person requesting the hearing, if a brief is filed, the Chief Benefits Director shall make a determination in the case; i.e., whether the refusal to accept a site or to guarantee loans as originally imposed is continued, modified, or terminated, and what terms or conditions, if any, are imposed for termination or modification. Notice of such determination shall be given to the person requesting the hearing. Such person shall have

the right to appeal such decision to the Administrator within 30 days after the date of receipt of such notice. In the event of an appeal, the Administrator will decide the matter finally and will notify the person who filed the appeal of the decision.

[36 FR 1253, Jan. 27, 1971, as amended at 46 FR 43671, Aug. 31, 1981]

COMBINATION AND MOBILE HOME LOT LOANS

§ 36.4251 Loans to finance the purchase of mobile homes and the cost of necessary site preparation.

(a) A loan to finance the purchase of a mobile home may include funds (or be augmented by a separate loan) to pay all or a part of the cost of the necessary site preparation of a lot on which to place such mobile home and any such loan shall be eligible for guaranty: *Provided, That—*

(1) The veteran has, or incident to the transaction will acquire, a title to the lot that conforms to § 36.4253(a).

(2) The loan is secured as required by § 36.4253(d).

(3) The lot is determined by the Administrator to be an acceptable mobile home site pursuant to § 36.4208.

(4) The cost of the necessary site preparation is determined by the Administrator to be reasonable.

(5) The amount of the loan to pay for necessary site preparation does not exceed the cost thereof and also does not exceed the reasonable value of the developed lot as determined by the Administrator, and

(6) The loan conforms otherwise to the requirements of the § 36.4200 series.

(b) Notwithstanding that the veteran-borrower's obligation for such site preparation be evidenced and secured separately from the obligation for purchase of the mobile home, the obligations together shall constitute one loan for the purposes of the § 36.4200 series, including computation of the Administrator's guaranty liability.

(c) The cost of site preparation which will not be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources.

[36 FR 3368, Feb. 23, 1971, as amended at 40 FR 13215, Mar. 25, 1975]

§ 36.4252 Loans for purchase of mobile home and for the acquisition of a lot.

(a) A loan to purchase a mobile home may include funds (or be augmented by a separate loan) to finance all or part of the cost of acquisition by the veteran of a lot on which to place such mobile home and any such loan shall be eligible for guaranty: *Provided*, That—

(1) The veteran will acquire title to such lot that conforms to the requirements of § 36.4253(a),

(2) The loan is secured as required by § 36.4253(d),

(3) The lot of determined by the Administrator to be an acceptable mobile home site pursuant to § 36.4208,

(4) The portion of the loan allocated to acquisition of the lot does not exceed the reasonable value of the lot as determined by the Administrator, and

(5) The loan conforms otherwise to the requirements of the § 36.4200 series.

(b) Notwithstanding that the veteran-borrower's obligation for acquisition of the lot be evidenced and secured separately from the obligation for purchase of the mobile home, the obligations together (including, where appropriate, that for site preparation) shall constitute one loan for the purposes of the § 36.4200 series, including computation of the Administrator's guaranty liability.

(c) The cost of lot acquisition which will not be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources.

(d) For the purpose of this section acquisition of a mobile home lot includes:

(1) The refinancing of the balance owed by the veteran as purchaser under an existing real-estate installment contract, and

(2) The refinancing of existing mortgage loans or other liens which are secured of record on a mobile home lot owned by the veteran.

[36 FR 3368, Feb. 23, 1971, as amended at 40 FR 13215, Mar. 25, 1975; 44 FR 22725, Apr. 17, 1979]

§ 36.4253 Title and lien requirements.

(a) The interest in the realty constituting a mobile home lot acquired by the veteran wholly or in part with the proceeds of a guaranteed loan, or in the realty constituting a mobile home lot improved wholly or in part with the proceeds of a guaranteed loan, shall not be less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Chief Benefits Director, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located, (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and, (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien.

The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section.

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights;

(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right by the terms thereof is exercisable only if:

(i) An owner elects to sell,

(ii) The option price is not less than the price at which the then owner is willing to sell to another, and

(iii) Exercised within 30 days after notice is mailed by certified mail to the address of optionee last known to the then owner of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by the Administrator in the particular case. Such approval shall be a condition precedent to the guaranty of the loan:

Provided, That the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C. 1819.

(c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of the mobile home lot and determined by the Administrator as not materially affecting the reasonable value of such property:

(1) *Building or use restrictions*. *Provided*, (i) no violation exists, (ii) the proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and (iii) any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan.

(2) *Violations of racial and creed restrictions*. Violations of a restriction based on race, color, creed or national origin, whether or not such restriction

provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(3) *Violations of building or use restrictions of record*. Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and which do not provide for a reversion or termination of title or condemnation by municipal authorities or a lien for liquidated damages which may be superior to the lien securing the guaranteed loan.

(4) *Easements*. (i) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights thereof do not interfere with the use of the mobile home or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) *Encroachments*. (i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subjects boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) *Variations of lot lines*. Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to Veterans Administration and as shown by the record or possession lines, provided such variations do not interfere

with the current use of any of the improvements on the subject property including the mobile home and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

(d) In a combination loan (loan to finance the purchase of a mobile home and to finance the purchase of a lot and/or necessary site preparation) the total indebtedness of the veteran arising from such combination loan transaction must be secured by a first lien or the equivalent thereof on the estate of the veteran in the mobile home lot, which real estate security interest shall be in addition to the mobile home security interest required by § 36.4234.

(e) Tax liens, special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Administrator, Chief Benefits Director, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or improvement of a mobile home lot is secured by a first lien the Administrator may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Administrator determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien created after June 6, 1969, the Administrator's determination must have been made prior to the recordation of the covenant.

(f) In the case of a combination loan or a loan to purchase a lot upon which

a mobile home owned by the veteran will be placed it shall be the responsibility of the lender that the veteran initially obtains or has an estate in the land constituting the mobile home lot meeting the requirements of paragraph (a) of this section and to obtain and retain a security interest thereon meeting the requirements of paragraph (d) of this section.

(38 U.S.C. 210(c), 1803(c), 1819(g))

[36 FR 3368, Feb. 23, 1971, as amended at 40 FR 13215, Mar. 25, 1975; 45 FR 55720, Aug. 21, 1980]

§ 36.4254 Fees and charges.

(a) Except as provided in § 36.4232 fees and charges incident to origination of a combination loan or a loan to purchase a lot upon which a mobile home owned by the veteran will be placed which may be paid by the veteran shall be limited, with respect to the real estate portion of the loan, to reasonable and customary amounts for any of the following:

(1) Fee of the Veterans Administration appraiser and of compliance inspectors designated by the Veterans Administration, except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.

(2) Recording fees and recording taxes or other charges incident to recordation.

(3) Credit report.

(4) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for any tax and insurance account.

(5) Survey, if required by lender or veteran.

(6) Title examination and title insurance, if any.

(7) Such other items as may be authorized in advance by the Chief Benefits Director as appropriate for inclusion under this paragraph as proper local variances.

(b) A lender may charge and the veteran may pay a flat charge not exceeding one (1) percent of the amount of the loan less the portion thereof allocated to the mobile home: *Provided*, That such flat charge shall be in lieu

of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(c) Except for a refinancing loan pursuant to 38 U.S.C. 1819(a)(1)(F), fees and charges specified in this section may not be included in the loan.

[36 FR 3369, Feb. 23, 1971, as amended at 40 FR 13215, Mar. 25, 1975; 46 FR 43671, Aug. 31, 1981]

§ 36.4255 Loans for the acquisition of a lot.

(a) A loan to finance all or part of the cost of acquisition by the veteran of a lot on which to place a mobile home owned by the veteran shall be eligible for guaranty. *Provided, That:*

(1) The veteran will acquire title to such lot that conforms to the requirements of § 36.4253(a).

(2) The loan is secured as required by § 36.4253(d).

(3) The lot is determined by the Administrator to be an acceptable mobile homesite pursuant to § 36.4208.

(4) The portion of the loan allocated to acquisition of the lot does not exceed the reasonable value of the lot as determined by the Administrator.

(5) The loan conforms otherwise to the requirements of the § 36.4200 series.

(b) The cost of lot acquisition which will not be paid from the proceeds of the loan must be paid by the veteran in cash from his or her own resources.

(c) For the purpose of this section, acquisition of a mobile home lot includes:

(1) The refinancing of the balance owed by the veteran as purchaser under an existing real estate installment contract, and

(2) The refinancing of existing mortgage loans or other liens which are secured of record on a mobile home lot owned by the veteran.

[40 FR 13215, Mar. 25, 1975]

SERVICING, LIQUIDATION OF SECURITY AND CLAIM

§ 36.4275 Events constituting default and acceptability of partial payments.

(a) Except as provided in paragraphs (a)(1) and (2) of this section the conveyance of or other transfer of title to property by operation of law or other

wise, after the creation of a lien thereon to secure a loan which is guaranteed in whole or in part by the Administrator, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty.

(1) The Administrator may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a mobile home or lot. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority. (38 U.S.C. 1819(g))

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis. (38 U.S.C. 1819(g))

(b) The inclusion in the guaranteed obligation of a provision contrary to the provisions of this section or § 36.4211 shall not impair the right of the holder to payment of the guaranty provided that:

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under § 36.4280, or

(3) The prior approval of the Administrator was obtained.

(c) If the title to real property or a leasehold interest therein which secures a mobile home loan guaranteed after December 22, 1970, is restricted against sale or occupancy on the ground of race, color, religion, or national origin, by restrictions created and filed of record by the borrower subsequent to that date, such action, at the election of the holder, shall constitute an event of default entitling

the holder to declare the unpaid balance of the loan immediately due and payable.

(d) The holder of any guaranteed obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity of such obligation at any time after the continuance of any default for the period specified in § 36.4280.

(e) If sufficient funds are tendered to bring a delinquency current at any time prior to repossession or foreclosure of the mobile home the holder shall be obligated to accept the funds in payment of the delinquency, unless the prior approval of the Administrator is obtained to do otherwise.

(f) A partial payment is a remittance on a loan in default (as defined in § 36.4202(c)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (f)(2) of this section, or upon the express waiver of the Administrator, the holder shall accept any partial payment and either apply it to the obligor's account or identify it with the obligor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the obligor's account.

(2) A partial payment may be returned to the obligor within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(i) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;

(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has

been agreed to under a written repayment plan;

(iv) The payment is less than the amount agreed to in a written repayment plan;

(v) The amount tendered is in the form of a personal check and the holder has previously notified the obligor in writing that only cash or certified remittances are acceptable;

(vi) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;

(vii) Foreclosure and/or repossession has been commenced by the taking of the first action required for foreclosure/repossession under local law;

(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4286(b), but such failure shall not constitute a defense to any legal action to terminate the loan. (38 U.S.C. 1819(g))

(38 U.S.C. 210(c), 1803(c), 1819(g))

[45 FR 31064, May 12, 1980, as amended at 46 FR 51386, Oct. 20, 1981]

§ 36.4276 Advances and other charges.

(a) A holder may advance any reasonable amount necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments or other charges which constitute prior liens, or premiums on fire or other hazard insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed indebtedness.

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; against gross amounts collected; or, in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4284, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security.

(2) Court costs in a foreclosure or other proper judicial proceeding involving the security.

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security, including a reasonable sales commission to the dealer or sales broker for resale of the security.

(4) Reasonable trustee's fees or commissions paid incident to the sale of real property.

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or \$350 whichever is less.

(6) Any other expense or fee that is approved in advance by the Administrator. (38 U.S.C. 1819(g))

In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b) (4) and (5) of this section) exceed \$350.

[36 FR 1253, Jan. 27, 1971, as amended at 45 FR 38056, June 6, 1980]

§ 36.4277 Release of security.

(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to property held as security for a guaranteed loan, or grant a fee or other interest in such property, without the prior approval of the Administrator, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of \$500: *Provided*, That the aggregate of the reduction in the original value of the security resultant from such releases without the Administrator's prior approval does not exceed \$500.

(b) Except upon full payment of the indebtedness or upon the prior approval of the Administrator, the holder shall not release a lien under paragraph (a) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's

duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(c) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(d) The holder shall notify the Administrator of any such release or substitution of security within 30 days after completion of such transaction.

(e) The release of the personal liability of any obligor on a guaranteed obligation resultant from the act or omission of any holder without the prior approval of the Administrator shall release the obligation of the Administrator as guarantor, except when such act or omission consists of

(1) Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed debt is thereby impaired or destroyed; or

(2) An election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4280 and if, after receiving such notice, the Administrator shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Administrator indicates is such notice to the holder; or

(3) The release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on his account pursuant to 38 U.S.C. 1819; or

(4) The release of an obligor or obligors as provided in § 36.4279.

§ 36.4279 Extensions and reamortizations.

(a) The terms of repayment of any loan may, by written agreement be-

tween the holder and debtor, be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a prepayment pursuant to § 36.4211, the balance of the indebtedness may, by written agreement between the holder and the debtor, be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity.

(c) Unless the prior approval of the Administrator has been obtained, any extension or reamortization agreed to by a holder which relieves any obligor from liability will release the liability of the Administrator under the guaranty on the entire loan. However, if such release of liability of an obligor results through operation of law by reason of an extension or other act of forbearance, the liability of the Administrator as guarantor will not be affected thereby. *Provided*, The required lien is maintained and the title holder is and will remain liable for the payment of the indebtedness; *And further provided*, That if such extension or act of forbearance will result in the release of the veteran, all delinquent installments, plus any foreclosure expenses which may have been incurred, shall have been fully paid.

(d) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed loan.

§ 36.4280 Reporting of defaults.

The holder of any guaranteed loan shall give notice to the Administrator within 15 days after any debtor:

(a) Is in default by reason of nonpayment of two full installments; or

(b) Is in default by failing to comply with any other covenant or obligation of such guaranteed loan which failure persists for a continuing period of 60 days after demand for compliance

therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 120 days.

(c) In the event any failure of the months or for more than 1 month on an extended loan, the holder may then or thereafter give the notice in the manner described in paragraph (e) of this section.

(d) The notice prescribed in paragraph (e) of this section may be submitted prior to the time prescribed in paragraph (c) of this section in any case where any material prejudice to the rights of the holder or to the Administrator or hazard to the security warrants more prompt action.

(e) Except upon the express waiver of the Administrator, a holder shall not begin proceedings in court or give notice of sale under power of sale, repossess the security, or accelerate the loan, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by certified mail to the Administrator of a notice of intention to take such action; *Provided*, That immediate action may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard.

§ 36.4281 Refunding of loans in default.

Upon receiving a notice of default the Administrator may at any time prior to the termination of the borrower's interest in the property require the holder upon penalty of otherwise losing the guaranty to transfer and assign the loan and the security therefor to the Administrator or to another designated by him upon receipt of payment of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4286.

§ 36.4282 Legal proceedings (notice of repossession).

(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Administrator were a party to the proceeding, shall deliver to the Administrator, by mail or otherwise, by making such delivery to the loan guaranty officer at the office which granted the guaranty, or other office to which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale under power by a holder or one acting at his behest (e.g., trustee or public official) shall be similarly delivered to the Administrator at or before the date of first publication, posting, or other notice, but in any event, except in emergency or when waived by the Administrator, not less than 10 days prior to date of sale. Copy of any other notice of sale served on the holder or of which he has knowledge shall be similarly delivered to the Administrator, including any such notice of sale under tax or other superior lien or any judicial sale.

(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be applicable in any proceeding to which the Administrator is a party, after the Administrator's appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Administrator is a party, original process and any other process prior to appearance, proper to be served on the Administrator, shall be delivered to the loan guaranty officer of the office of the Veterans Administration having jurisdiction of the area in which the court is situ-

ated. Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the cause by the Administrator's authorized attorney.

(e) After appearance of the Administrator by attorney, all process and notice otherwise proper to serve on the Administrator before or after judgment, if served on the Administrator's attorney of record shall have the same effect as if the Administrator were personally served within the jurisdiction of the court.

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator shall have the option to intervene in, or begin and prosecute to completion any action or proceeding, in the Administrator's name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator, or properly taxed against the Administrator, in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4276), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

(g) The holder, no later than 10 days after it has repossessed a property, must advise the Administrator of such repossession. The holder shall proceed thereafter, within a reasonable time after repossession, to terminate the debtors' rights in the property. If it is a legal requirement or if the Adminis-

trator requires that the debtors' rights be terminated by public sale, the holder shall follow the procedures set forth in paragraph (b) of this section. Otherwise, the holder shall proceed in the manner set forth in § 36.4283(f).

[36 FR 1253, Jan. 27, 1971, as amended at 47 FR 12965, Mar. 26, 1982]

§ 36.4283 Foreclosure or repossession.

(a) Upon receipt by the Administrator of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed loan, the Administrator may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of paragraphs (a) (1), (2), (3), and (4) of this section:

(1) If a minimum amount has been specified in relation to a sale of the property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall dispose of the property in the manner set forth in paragraph (f) and the amount realized from the resale of the property shall govern in the final accounting for determining the rights and liabilities of the holder and the Administrator.

(2) If a minimum amount has been specified by the Administrator and:

(i) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale.

(ii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified less expenses allowable under § 36.4276.

(iii) The holder is the successful bidder at the sale for an amount in excess of the specified amount the indebtedness shall be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d) of this section.

(3) If a minimum amount has not been specified by the Administrator under paragraph (a) (1) or (2) of this section, and the Administrator advised the holder that it did not intend to specify an amount, and the property is purchased at the sale by a third party, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d) of this section. However, if the property is purchased at the sale by the holder, the indebtedness will be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is greater.

(4) The holder shall notify the Administrator of the results of the sale within 10 days after the sale is completed.

(b) In the event that any real property which is security for a guaranteed loan is to be acquired by a holder in a manner other than as provided in paragraph (a) or (c) of this section (e.g., by strict foreclosure or by the termination without a public sale of the purchaser's interest in a land sale contract), the holder shall notify the Administrator of the acquisition within 15 days thereafter and account to the Administrator for the proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(c) When a debtor proposes to convey or transfer any property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Administrator to the terms of such proposal shall be obtained in advance of such conveyance or transfer. If the Administrator consents thereto, the holder may acquire the property and account to the Administrator for the proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(d) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Administrator and the holder is the

successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purpose of this section.

(e) If the Administrator has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Administrator of such damage. Also, if the holder acquires or repossesses the property and the holder learns of any material damage to it, the holder shall promptly advise the Administrator of such damage.

(f) When the security for a guaranteed loan is acquired by the holder through foreclosure or otherwise, the holder shall resell the property within a reasonable time and may thereafter submit its claim under the guaranty. The Administrator, upon receipt of a notice of acquisition, shall determine the current reasonable value of the property and advise the holder of the minimum selling price that will be acceptable in any accounting with the Administrator upon liquidation of the security.

(1) If the holder resells the property for an amount at least equal to the minimum selling price, it shall credit the indebtedness with the proceeds of the sale.

(2) If the holder is unable to resell the property for an amount at least equal to the minimum selling price after exposure to the market for a reasonable period of time, the holder may submit to the Administrator a written advice setting forth the price, terms, conditions and expenses of any offer received. The Administrator shall thereupon:

(i) Assent to the resale of the property upon the terms of such offer, in which event the holder will credit the indebtedness with the proceeds of the sale, or

(ii) Review the minimum selling price previously established and, if appropriate, provide the holder with a reduced minimum selling price at which the property shall be further exposed to the market.

(3) If the holder resells the property and finances the sale under the terms of a new security agreement and note, the Administrator may, pursuant to paragraph (f)(3)(iv) of this section, agree to indemnify the holder against loss on the new loan.

(i) The Administrator's maximum liability under the indemnity agreement shall be the percentage of the loan originally guaranteed applied to the indebtedness as of the date of claim computation as set forth in § 36.4284(a), or the amount originally guaranteed, or the amount of the Administrator's liability under a preexisting indemnity agreement, whichever is less.

(ii) In the event the proceeds of sale are less than the total indebtedness, the Administrator may pay a partial claim for the difference between the indebtedness and the proceeds of sale and thereafter agree to indemnify the holder for the amount of the maximum liability as of the date of claim computation, less the amount of claim paid.

(iii) Subject to the limitation that the total amount payable under an indemnity agreement shall in no event exceed the Administrator's maximum liability, the remaining liability will be continued as a percentage of the new loan amount increasing or decreasing pro rata with any increase or decrease in the balance of the loan obligation.

(iv) The Administrator shall execute an indemnity agreement evidencing the amount and terms of the indemnity liability, provided:

(A) The Administrator has determined that resale of the security under an indemnity agreement is in the best interest of the Government, and the holder has obtained the prior approval of the Administrator;

(B) The terms of repayment of the proposed loan bear a proper relationship to the borrower's present and anticipated income and expenses, and the borrower is a satisfactory credit risk;

(C) The borrower executes an agreement establishing liability to the Administrator for the amount of any claim paid under the indemnity agreement;

(D) The term of the proposed loan does not exceed the maximum term allowable under § 36.4204(c)(4);

(E) The interest rate charged the borrower does not exceed the maximum rate allowable under § 36.4212 as of the date of closing pursuant to the indemnity agreement;

(F) The holder agrees to comply with VA mobile home regulations as if the original loan had not been terminated. (38 U.S.C. 1819(g))

(g) If at the end of 6 months from the date of acquisition the holder has been unable to resell the property a claim may be submitted under the guaranty and the Administrator will pay to the holder upon submission of such claim:

(1) The difference between the appraised value of the property as determined by the Administrator and the indebtedness including those costs allowable under § 36.4276 and the costs of repossessing the mobile home not to exceed \$100, plus any accrued and unpaid interest to the applicable cut-off date as set forth in § 36.4284(a) at the maximum rate allowable plus accrued interest at a rate of 6 percent from such cut off date to the date of claim but not to exceed 60 days or,

(2) The amount of the guaranty payable on the total outstanding indebtedness as of the applicable cutoff date set forth in § 36.4284(a), whichever is less.

(h) If the property securing the guaranteed loan is acquired by a holder pursuant to paragraph (a), (b) or (c) of this section, or § 36.4282(g), the following provisions shall apply:

(1) The holder's notice to the Administrator after acquisition shall state the amount of the successful bid at public sale, or in the event of a repossession or a voluntary conveyance, the date of acquisition.

(2) The holder's notice after acquisition shall also provide complete occupancy data. Except with the prior approval of the Administrator the holder shall not rent the property to a new tenant nor extend the terms of an existing tenancy on other than a month-to-month basis.

(3) Except with the prior approval of the Administrator, any taxes or special assessments which constitute prior

liens due and payable after acquisition of the property by the holder shall be paid by the holder sufficiently in advance of the payment due dates to avoid penalties and to take advantage of any discounts. The holder also may include in its accounting with the Administrator any expenditures for repairs made that were reasonably necessary to properly maintain or refurbish the security property, not to exceed \$400. Expenditures in excess of \$400 shall not be made without the prior approval of the Administrator.

(4) As between the holder and the Administrator, the holder shall be responsible for any loss due to damage to or destruction of the property, ordinary wear and tear excepted, from the date of repossession or acquisition by the holder to the date the property has been liquidated.

(5) The holder shall include as credits in its accounting with the Administrator all rentals and other income collected from the property and insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(i) Definitions: (1) The terms "date of sale" or "date of acquisition" as used in this section are defined as the date of the event (e.g., date of repossession, date of sale confirmation when required under local practice, date of acceptance of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term "property" or "real property" as used in this section shall include:

(I) A leasehold estate therein which at the time of closing the loan was of not less duration than that prescribed by § 36.4253, and

(II) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) The provisions of this section shall not be in derogation of any rights which the Administrator may have under § 36.4286. The Chief Benefits Director, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations pre-

scribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State, Territory, or the District of Columbia: *Provided*, That no such deviation shall impair the rights of any holder not consenting thereto with respect to loans made or approved prior to the date the holder is notified of such action.

[36 FR 1253, Jan. 27, 1971, as amended at 47 FR 12965, Mar. 26, 1982]

§ 36.4284 Computation of guaranty claims.

(a) Subject to the limitation that the maximum amount payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure; or (2) in nonjudicial foreclosures, the date of publication of the first notice of sale; or (3) in cases in which the security is repossessed without a judgment, decree, or foreclosure, the date the holder repossesses the security; or (4) if no security is available, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs including any escrowed or earmarked funds legally applicable to the indebtedness on the date of the claim computation shall be applied in reduction of the indebtedness upon which the claim is based.

(b) Credits accruing from the proceeds of a sale or other disposition of the security shall be reported to the Administrator incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(c) Any allowable expenditures or costs, paid by the holder, and any accrued and unpaid interest to the applicable cutoff date as set forth in paragraph (a) of this section at the maximum rate allowable, plus accrued interest at a rate of 6 percent from such cutoff date to the date of resale or other liquidation but not to exceed 60 days may be deducted from the pro-

ceeds of the sale of the property, or may be included in the accounting to the Administrator on such loan.

(d) In computing the indebtedness for the purpose of filing a claim for payment of a guaranty, or in the event of a transfer of the loan under § 36.4281, or other accounting to the Administrator, the holder shall not be entitled to treat repayments theretofore made, as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

§ 36.4285 Subrogation and indemnity.

(a) The Administrator shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor except that where the holder has entered into a recourse and/or repurchase or indemnity agreement with a dealer or servicer or other entity and the Veterans' Administration pays a claim under guaranty to the holder the Veterans' Administration will not be subrogated to any rights the holder may have under the recourse and/or repurchase or indemnity agreement. No partial or complete release by a creditor shall impair the rights of the Administrator with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge, and deliver an appropriate instrument tendered the holder for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator may cause the instrument required by paragraph (b) of this section to be filed for record in the Office of the Recorder of Deeds, or other appropriate office of the proper county, town, or State, in accordance with the applicable State law.

(d) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed under the pro-

visions of 38 U.S.C. 1819 shall constitute a debt owing to the United States by such veteran.

(e) Whenever any veteran disposes of residential property securing a guaranteed loan obtained under 38 U.S.C. 1819, the Administrator, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Administrator on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Administrator has determined, after such investigation as the Administrator may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1817(a). The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Administrator may require. Release of the veteran from liability to the Administrator will not impair or otherwise affect the Administrator's guaranty on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Administrator shall inure to the spouse of such veteran. The release of the veteran from liability to the Administrator will constitute the Administrator's prior approval to a release of the veteran from liability on the loan by the holder thereof. This release will not result in the veteran being entitled to further loan benefits unless the requirements of § 36.4203 are met.

(f) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed loan obtained by him or her under 38 U.S.C. 1819, without securing a release from liability with respect to such loan under 38 U.S.C. 1817(a) and a default subsequently occurs which results in liability of the veteran to the Administrator on account of the loan, the Administrator may relieve the veteran of such liability if the Administrator determines that:

(1) A transferee either immediate or remote is legally liable to the Administrator for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Administrator is found to have been a satisfactory credit risk at the time he or she acquired the property. (38 U.S.C. 1817(b))

[36 FR 1253, Jan. 27, 1971, as amended at 36 FR 13032, July 13, 1971; 44 FR 16015, Mar. 16, 1979]

§ 36.4286 Partial or total loss of guaranty.

(a) There shall be no guaranty liability on the part of the Administrator in respect to any loan as to which a signature to the note, the mortgage or other security instrument is a forgery. Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty shall relieve the Administrator of liability, or shall constitute a defense against liability on account of the guaranty of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: *Provided*, That if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. 1819 and the § 36.4200 series, a holder shall obtain the required lien on real property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated: *Provided*, That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4253. If such holder falls in this respect or fails to comply with any of the requirements of 38 U.S.C. 1819 and the § 36.4200 series with respect to:

(1) Obtaining and retaining a lien of the dignity prescribed on all property

upon which a lien is required by 38 U.S.C. 1819 or the § 36.4200 series.

(2) Inclusion of power to substitute trustees.

(3) The procurement and maintenance of insurance coverage.

(4) Advice to Administrator as to default.

(5) Notice of intention to begin action.

(6) Notice to the Administrator in any suit or action, or notice of sale.

(7) The release, conveyance, substitution, or exchange of security.

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted.

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement.

(10) The taking into consideration of limitations upon the quantum or quality of the estate or property.

(11) Any other requirement of 38 U.S.C. 1819 or the § 36.4200 series which does not by the terms of said section or regulations result in relieving the Administrator of all liability with respect to the loan,

no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Administrator would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Administrator shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Administrator. To the extent the loss resultant from the failure of misrepresentation prejudices the Administrator's right of subrogation acceptance by the holder of the guaranty payment shall subordinate the holder's right to those of the Administrator.

(c) If after the payment of a guaranty, or after a loan is transferred pursuant to § 36.4281, the fraud, misrepresentation, or failure to comply with the regulations concerning guaranty of loans to veterans as provided in this section is discovered and the Administrator determines that an increased loss to the Government resulted therefrom, the transferee or person to whom such payment was made shall be liable to the Administrator for the amount of the loss caused by such misrepresentation or failure.

§ 36.4287 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed loan, if it names trustees or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees or other person with such power to sell, who shall succeed to all the rights, powers, and duties of the trustees, or other person, originally designated.

GUARANTY OR INSURANCE OF LOANS TO VETERANS

AUTHORITY: Sections 36.4300 to 36.4386 issued under 72 Stat. 1114 (38 U.S.C. 210).

NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. Ch. 37 are not restated herein and must be taken into consideration in conjunction with §§ 36.4300 to 36.4393, inclusive.

[24 FR 2651, Apr. 7, 1959, as amended at 47 FR 15139, Apr. 8, 1982]

§ 36.4300 Applicability of §§ 36.4300 to 36.4393, inclusive.

(a) Sections 36.4300 to 36.4393, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication thereof in the **FEDERAL REGISTER**, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired.

(b) Title 38, U.S.C. chapter 37, is a continuation and restatement of the provisions of title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to

such title III. References in the regulations concerning guaranty or insurance of loans to veterans to the sections or chapters of Title 38, U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(38 U.S.C. 210(c), 1803(c), 1819(g))

[24 FR 2651, Apr. 7, 1959, as amended at 47 FR 15139, Apr. 8, 1982]

§ 36.4301 Definitions.

Wherever used in 38 U.S.C. chapter 37 or §§ 36.4300 to 36.4375, inclusive, and §§ 36.4390 through 36.4393, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

"A period of more than 180 days": For the purposes of sections 1807 and 1818 of title 38, United States Code, the term "a period of more than 180 days" shall mean 181 or more calendar days of continuous active duty.

"Acquisition and improvement loan." A loan to purchase an existing property which includes additional funds for the purpose of installing energy conservation improvements or making other alterations, improvements, or repairs. (38 U.S.C. 1803(c)(1), 1810(a)(1), (4), and (7))

"Administrator." The Administrator of Veterans Affairs, or any employee of the Veterans Administration authorized to act in the Administrator's stead.

"Alterations." Any structural changes or additions to existing improved realty.

"Condominium." Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements.

"Cost" means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

"Date of first uncured default" means the due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

"Default" means failure of a borrower to comply with the terms of a loan agreement.

"Designated" appraiser means a person requested by the Administrator to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in 38 U.S.C. chapter 37. An appraiser on a fee basis is not an agent of the Administrator.

"Discharge or release." For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 1802(c)). The term discharge or release" includes (1) retirement from the active military, naval, or air service, and (2) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable. (38 U.S.C. 101(18))

"Dwelling." Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership thereof, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a the term is limited to one single-family residential unit.

"Economic readjustment." means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable the veteran to meet obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

"Energy conservation improvement." An improvement to an existing dwelling or farm residence through the installation of a solar heating

system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 1810(d) or by the Administrator. (38 U.S.C. 1810(a)(7))

"Full disbursement." Payment by a lender of the entire proceeds of a loan or the purposes described in the report of the lender in respect of such loan to the Administrator either—

(1) By payment to those contracting with the borrower for such purposes, or

(2) By payment to the borrower, or

(3) By transfer to an account against which the borrower can draw at will, or

(4) By transfer to an escrow account, or

(5) By transfer to an earmarked account if

(i) The amount thereof is not in excess of 10 percent of the loan, or

(ii) The loan is an Acquisition and Improvement loan pursuant to § 36.4301, or

(iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 1802(d) or 1815(a). (38 U.S.C. 1803(c)(1))

"Graduated payment mortgage loan." A loan for the purpose of acquiring a single-family dwelling unit involving a plan for repayment in which a portion of the interest due is deferred for a period of time. The interest so deferred is added to the principal balance thus resulting in a principal amount greater than at loan origination (negative amortization). The monthly payments increase on an annual basis (graduate) for a predetermined period of time until the payments reach a level which will fully amortize the loan during the remaining loan term. (38 U.S.C. 1803 (c) and (d))

"Guaranty" means the obligation of the United States, assumed by virtue of 38 U.S.C. chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

"Holder" means the lender or any subsequent assignee or transferee of the guaranteed or insured obligation.

"Home" means place of residence.

"Improvements." Any alteration that improves the property for the purpose for which it is occupied.

"Indebtedness" means the unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4393, inclusive, which have been paid and debited to the loan account.

"Insurance" means the obligation assumed by the United States to indemnify a lender to the extent specified in §§ 36.4300 to 36.4393, inclusive, for any loss incurred upon any loan insured under 38 U.S.C. 1815.

"Insurance account" means the record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 1815.

"Lender" means the payee or assignee or transferee of an obligation at the time it is guaranteed or insured.

"Lien" means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

"Net loss" (insured loans) means the indebtedness, plus any other charges authorized under § 36.4313, remaining unsatisfied after the liquidation of all available security and recourse to all intangible rights of the holder against those obligated on the debt.

"Purchase price" means the entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied thereto.

"Real-estate loan." Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclu-

sive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 1810(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 1810(a)(8) (refinancing of a Veterans Administration guaranteed, insured or direct loan to lower the interest rate), and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real-estate loans.

"Reasonable value" means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

"Registered mail." The term "registered mail" wherever used in the regulations concerning guaranty or insurance of loans to veterans shall include certified mail.

"Repairs." Any alteration of existing improved realty or equipment which is necessary or advisable for protective, safety or restorative purposes.

"Repossession - repossessed" means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

"Residential property." (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a, (2) any improved real property (other than a condominium housing development) or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (3) any land to be purchased out of the proceeds of a loan

for the construction of a dwelling, and on which such dwelling is to be erected.

(38 U.S.C. 210(c), 1803(c)(1))

[24 FR 2651, Apr. 7, 1959, as amended at 24 FR 5370, July 2, 1959; 27 FR 223, Jan. 9, 1962; 31 FR 3459, Mar. 5, 1966; 40 FR 34589, Sept. 17, 1975; 41 FR 44858, Oct. 13, 1976; 43 FR 60459, Dec. 28, 1978; 44 FR 47337, Aug. 13, 1979; 45 FR 20472, Mar. 28, 1980; 45 FR 53808, Aug. 13, 1980; 46 FR 43671, Aug. 31, 1981; 47 FR 15139, Apr. 8, 1982]

GENERAL PROVISIONS

§ 36.4302 Computation of guaranties or insurance credits.

(a) In respect to a loan to a veteran guaranteed under 38 U.S.C. 1810 the guaranty may not exceed sixty (60) percent of the original principal amount or \$27,500 whichever is less. With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced. (38 U.S.C. 1803(a), 1810(c))

(b) An amount equal to 15 percent of the original principal amount of each insured loan shall be credited to the insurance account of the lender and shall be charged against the guaranty entitlement of the borrower: *Provided*, That no loan may be insured unless the borrower has sufficient entitlement remaining to permit such credit.

(c) Subject to the provisions of paragraph (g) of § 36.4303, the following formulas shall govern the ascertainment of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from \$27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for mobile home loan purposes may not exceed \$20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from \$27,500. The sum remaining is the amount of available entitlement for use, except that entitlement

ment for mobile home loan purposes may not exceed \$20,000.

(3) If a veteran previously secured a mobile home loan, the amount of entitlement used for mobile home loan purposes is subtracted from \$27,500. The sum remaining is the amount of available entitlement for home loan purposes only. To determine the amount of entitlement available for mobile home purposes, the amount of entitlement previously used for mobile home purposes is subtracted from \$20,000. The sum remaining is the amount of available entitlement for use for mobile home loan purposes. (38 U.S.C. 1810(c), 1819(c)(4))

(d) For the purpose of computing the remaining guaranty or insurance benefit to which a veteran is entitled, loans guaranteed prior to the effective date of §§ 36.4300 to 36.4393, inclusive, shall be taken into consideration as if made subsequent thereto.

(e) A loan eligible for insurance may be either guaranteed or insured at the option of the borrower and the lender: *Provided*, That if the Administrator is not advised of the exercise of such option at the time the loan is reported pursuant to § 36.4303 such loan will not be eligible for insurance.

(f) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty, whichever is less. Except that on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty. (38 U.S.C. 1803 (b) and (d))

(g) The amount of any guaranty or the amount credited to a lender's insurance account in relation to any insured loan shall be charged against the original or remainder of the guaranty benefit of the borrower. Complete or partial liquidation, by pay-

ment or otherwise, of the veteran's guaranteed or insured indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum amount of guaranty or insurance legally available to a veteran shall have been granted, no further guaranty or insurance is available to the veteran.

(h) Notwithstanding the provisions of paragraph (g) of this section, the Administrator may exclude the amount of guaranty or insurance entitlement used for any guaranteed or insured loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2) The loan has been repaid in full, or the Administrator has been released from liability as to the loan, or if the Administrator has suffered a loss on said loan, such loss has been paid in full; or

(3) An immediate veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally. The Administrator may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraph (h) (1) or (2) of this section.

(i)(1) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Administrator, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity. (38 U.S.C. 1801(a))

(2) An unmarried surviving spouse who was a co-obligor under an existing Veterans Administration guaranteed, insured or direct loan shall be considered to be a veteran eligible for an in-

terest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8). (38 U.S.C. 1810(e)(3))

(38 U.S.C. 210(c), 1803(c)(1))

[13 FR 7274, Nov. 27, 1948, as amended at 35 FR 17179, Nov. 7, 1970; 40 FR 34589, Aug. 18, 1975; 46 FR 43672, Aug. 31, 1981; 47 FR 15139, Apr. 8, 1982]

§ 36.4303 Reporting requirements.

(a) With respect to loans automatically guaranteed under 38 U.S.C. 1803(a)(1) evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 1802(d) if the loan is reported to the Administrator within 60 days following full disbursement, and upon the certification of the lender that:

(1) No default exists thereunder which has continued for more than 30 days;

(2) Except for acquisition and improvement loans as defined in § 36.4301, any construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Administrator have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based, and any deviations or changes of identity in said property have been approved as required in § 36.4304 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C. chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans. (38 U.S.C. 1803(c)(1))

(b) Loans made pursuant to 38 U.S.C. 1815 although not entitled to automatic insurance thereunder may, when made by a lender of a class described in 38 U.S.C. 1802(d)(1), be reported for issuance of an insurance credit. (38 U.S.C. 1802(d), 1815)

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 1802(d) shall be submitted to the Administrator for approval prior to closing. Lenders described in 38 U.S.C.

1802(d) shall have the optional right to submit any loan for such prior approval. The Administrator upon determining any loan so submitted to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and—

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

(3) Except for acquisition and improvement loans as defined in § 36.4301(c), any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Administrator have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based and that any deviations or changes of identity in said property have been approved as required by § 36.4304, and

(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans. (38 U.S.C. 1803(c)(1))

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: *Provided, nevertheless*, That if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Administrator, notwithstanding the report is received after the date otherwise required.

(f) Evidence of a guaranty will be issued by the Administrator by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible; nor shall guaranty or insurance evidence be issued on any loan for the purchase or construction of residential property, or for the alteration, improvement or repair thereof unless the Administrator determines that there has been compliance by the veteran with the certification requirements of 38 U.S.C. 1802(c), 1804(c).

(g) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Administrator as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Veterans Administration. Eligibility derived from the most recent period of service.

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Administrator the resulting in-

debtedness of the veteran to the United States has been paid in full.

Provided. That if the Administrator issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Administrator in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Administrator will be deemed to have incurred actual loss on a guaranteed or insured loan if the Administrator has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Administrator is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Administrator will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual pay-out" of the entire loan proceeds. (38 U.S.C. 1802(a), 1810(c))

(h) Any amounts which are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(i) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of

this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(j) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract which:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Administrator; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value;

unless such contract includes, or is amended to include, a provision substantially as follows:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Veterans Administration. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Veterans Administration.

(38 U.S.C. Secs. 210(c), 1803(c)(1))

[13 FR 7274, Nov. 27, 1948, as amended at 19 FR 4002, July 1, 1954; 24 FR 2652, Apr. 7, 1959; 34 FR 4889, Mar. 6, 1969; 43 FR 60460, Dec. 28, 1978; 45 FR 53809, Aug. 13, 1980; 46 FR 43672, Aug. 31, 1981; 47 FR 15139, Apr. 8, 1982]

§ 36.4304 Deviations; changes of identity.

A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Administrator. Any deviation in excess of 5 percent or change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of

reasonable value: *Provided*, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identity of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Administrator.

[17 FR 9668, Oct. 25, 1952]

§ 36.4305 Partial disbursement.

In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: *Provided*,

(a) A report of the loan is submitted to the Administrator within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Administrator.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.

(c) The Administrator determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.

(d) There has been full compliance with the provisions of 38 U.S.C. Chapter 37 and of the applicable regulations up to the time of the last disbursement.

(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Administrator shall be based upon such portion of the amount disbursed out of the proceeds of the loan which, when added to any

other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated: *And provided further*, That the lender shall certify as follows:

(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

[13 FR 7275, Nov. 27, 1948, as amended at 15 FR 4397, July 12, 1950; 24 FR 2653, Apr. 7, 1959]

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Except as provided in paragraph (e) of this section any loan for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as the veteran's home shall be submitted to the Administrator for prior approval. A loan for such purpose shall be eligible for guaranty in an amount not to exceed sixty (60) percent of the loan amount or \$27,500, whichever is less, provided that—(38 U.S.C. 1810(c))

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence.

(2) The discount, if any, to be paid by the veteran is reasonable in amount, and

(3) The loan is otherwise eligible for guaranty.

(b) A refinancing loan (38 U.S.C. 1810(a)(5)) for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess loan proceeds to be paid to

the veteran) but does not exceed the reasonable value of the property may also be approved for guaranty provided that—

(1) The discount, if any, to be paid by the veteran is reasonable in amount,

(2) The loan is otherwise eligible for guaranty, and

(3) The issuance of a guaranty commitment on any such loan which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Chief Benefits Director otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinancing under the provisions of 38 U.S.C. 1810(a)(5) a Veterans Administration guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied by the veteran as a home.

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) For lenders of a class specified in the first sentence of 38 U.S.C. 1802(d), the effective date of the prior approval requirement in paragraph (a) of this section is January 18, 1971.

(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

[35 FR 18872, Dec. 11, 1970, as amended at 46 FR 43672, Aug. 31, 1981]

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810(a)(8), a veteran may refinance an existing Veterans Administration guaranteed, insured or direct loan to reduce the interest rate payable on the Veterans Administration loan provided the following requirements are met:

(1) The loan must be submitted to the Administrator for prior approval;

(2) The loan must be secured by the same dwelling or farm residence as the loan being refinanced and such dwelling or farm residence must be owned and occupied by the veteran as such veteran's home;

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a reasonable discount as authorized in § 36.4312(d)(6);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1810(a)(8) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 1810(a)(8)) may not exceed the original term of the loan being refinanced.

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a)(8)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4350. (38 U.S.C. 1810(a)(8) and (c))

§ 36.4307 Joint loans.

(a) Except as provided in paragraph (b) of this section, the prior approval of the Administrator is required in respect to any loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only, unless such interest is at least a 50 percent interest in a partnership. The amount of the guaranty or insurance credit shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of residential property shall not require prior approval or preclude the issuance of a guaranty or insurance credit based upon the entire amount of the loan. If both spouses be eligible veterans, either or both may, within permissible maxima, utilize available guaranty or insurance entitlement.

(c) For the purpose of determining the rights and the liabilities of the Administrator with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran (including the gratuity paid pursuant to former provisions of law), shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

[13 FR 7739, Dec. 15, 1948, as amended at 24 FR 2653, Apr. 7, 1959; 40 FR 34590, Aug. 18, 1975]

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

(a) Except as provided by paragraph (e) of this section the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Administrator, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

(b) The term of payment of any guaranteed or insured obligation shall bear a proper relation to the borrower's present and anticipated income and expenses, (except loans pursuant to 38 U.S.C. 1810(a)(8)). In addition the terms of payment of any guaranteed or insured obligation shall provide for discharge of the obligation at a definite date or dates or intervals, in amount specified on or computable from the face of the instrument. A loan which is payable on demand, or at sight, or on presentation, or at a time not specified or computable from the language in the note, mortgage, or other loan instrument, or which contemplates periodic renewals at the option of the holder to satisfy the repayment requirements of this section, is not eligible for guaranty or insurance, except as provided in paragraph (d) of this section.

(c) No guaranteed or insured obligation shall contain a provision to the effect that the holder shall have the right to declare the indebtedness due, or to pursue one or more legal or equitable remedies, if holder "shall feel insecure," or upon the occurrence of one or more such conditions optional to the holder, without regard to an act or omission by the debtor, which condition by the terms of the note, mort-

gage, or other loan instrument would at the option of the holder afford a basis for declaring a default.

(d) Notwithstanding the inclusion in the guaranteed or insured obligation of a provision contrary to the provisions of this section, the right of the holder to payment of the guaranty or insurance shall not be thereby impaired: *Provided*,

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under § 36.4317 (a), or

(3) The prior approval of the Administrator was obtained.

(e)(1) The Administrator may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority. (38 U.S.C. 1803(c))

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consist in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis. (38 U.S.C. 1803(c))

(f) The holder of any guaranteed or insured obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity or such obligation at any time after the continuance of any default for the period specified in § 36.4316.

(g) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any secu-

rity for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless:

(1) The prior approval of the Administrator is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.

A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have been begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.). (38 U.S.C. 1803(c)(1))

(38 U.S.C. Secs. 210(c), 1803(c), 1819(g))

[13 FR 7739, Dec. 15, 1948, as amended at 15 FR 4397, July 12, 1950; 43 FR 53728, Nov. 17, 1978; 46 FR 43673, Aug. 31, 1981; 46 FR 51386, Oct. 20, 1981]

§ 36.4309 Amortization.

(a) All loans, the maturity date of which is beyond 5 years from date of loan or date of assumption by the veteran, shall be amortized. Except as provided in paragraph (e) of this section, the schedule of payments thereon shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan. The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan such installment may be for an amount not in excess of 5 per centum of the original principal amount of the loan. The limitations imposed herein on the amount of the final installment shall not apply in the case of any loan extended pursuant to § 36.4314(a).

(b) Any plan of repayment on loans required to be amortized which does not provide for approximately equal periodic payments shall not be eligible unless the plan conforms with the provisions of paragraph (c) of this section, or is otherwise approved by the Administrator.

(c) Every guaranteed or insured loan shall be repayable within the estimated

economic life of the property securing the loan.

(d) Subject to paragraph (a) of this section, any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in 38 U.S.C. chapter 37 shall automatically fall due on such date. (See § 36.4334.)

(e) A graduated payment mortgage loan, providing for deferrals of interest during the first 5 years of the loan and addition of the deferred amounts to principal shall be eligible, *Provided*:

(1) The loan is for the purpose of acquiring a single-family dwelling unit, including a condominium unit or simultaneously acquiring and improving a previously occupied, existing single-family dwelling unit.

(2)(i) For proposed construction or existing homes not previously occupied (new homes), the maximum loan amount cannot exceed 97.5 percent of the lesser of the reasonable value of the property as of the time the loan is made or the purchase price.

(ii) For previously occupied, existing homes the maximum loan amount must be computed to assure that the principal amount of the loan, including all interest scheduled to be deferred and added to the loan principal, will not exceed the purchase price or reasonable value of the property, whichever is less, as of the time the loan is made;

(3) The increases in the monthly periodic payment amount occur annually on each of the first five annual anniversary dates of the first loan installment due date, at a rate of 7.5 percent over the preceding year's monthly payment amount;

(4) Beginning with the payment due on the fifth annual anniversary date of the first loan installment due date, all remaining monthly periodic payments are approximately equal in amount and amortize the loan fully in accordance with the requirements of this section, and

(5) The plan is otherwise acceptable to the Administrator. (38 U.S.C. 1803(d))

(38 U.S.C. 210(c), 1803(c)(1))

[13 FR 7275, Nov. 27, 1948, as amended at 24 FR 2653, Apr. 7, 1959; 47 FR 15139, Apr. 8, 1982]

§ 36.4310 Prepayment.

The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or \$100, whichever is less. Any prepayment in full of the indebtedness shall be credited on the date received, and no interest may be charged thereafter. Any partial prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default.

[38 FR 25678, Sept. 14, 1973]

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 15½ per centum per annum, effective March 2, 1982, the interest rate on any home or condominium loan guaranteed or insured wholly or in part on or after such date may not exceed 15½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Effective March 2, 1982, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements of repairs which is guaranteed or insured wholly or in part on or after such date may not exceed 16 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, That a late charge not in excess of an amount equal to a 4 percent on any installment paid more than 15 days after due date shall

not be considered a violation of this limitation.

(d) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8)) may specify an interest rate in excess of the rate specified in paragraphs (a) and (b) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current Veterans Administration loan being refinanced. (38 U.S.C. 1803(c)(1) and 1810(e))

(38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1819(f) and (g))

[45 FR 20472, Mar. 3, 1980, as amended at 46 FR 43673, Aug. 31, 1981; 47 FR 9827, Mar. 8, 1982]

§ 36.4312 Charges and fees.

(a) No charge shall be made against, or paid by, the borrower incident to the making of a guaranteed or insured loan other than those expressly permitted under the schedule set forth in paragraph (d) of this section, and no loan shall be guaranteed or insured unless the lender certifies to the Administrator that it has not imposed and will not impose any charges or fees against the borrower in excess of those permissible under paragraph (d) of this section. Any charge which is proper to make against the borrower under the provisions of this paragraph may be paid out of the proceeds of the loan: *Provided*, That if the purpose of the loan is to finance the purchase or construction of residential property the costs of closing the loan including the pro rata portion of the ground rents, hazard insurance premiums, current year's taxes, and other prepaid items normally involved in financing such transaction may not be included in the loan.

(b) Except as provided in the regulations concerning the guaranty or insurance of loans to veterans, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically, or otherwise.

(c) Brokerage or other charges shall not be made against the veteran for obtaining any guaranty or insurance under 38 U.S.C. Chapter 37, nor shall any premiums for insurance on the

life of the borrower be paid out of the proceeds of a loan.

(d) The following schedule of permissible fees and charges shall be applicable to all Veterans Administration guaranteed or insured loans.

(1) The veteran may pay reasonable and customary amounts for any of the following items:

(i) Fee of Veterans Administration appraiser and of compliance inspectors designated by the Veterans Administration except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.

(ii) Recording fees and recording taxes or other charges incident to recordation.

(iii) Credit report.

(iv) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for the tax and insurance account.

(v) Hazard insurance required by § 36.4326.

(vi) Survey, if required by lender or veteran; except that any charge for a survey in connection with a loan under §§ 36.4356 through 36.4360a (Condominium Loans) must have the prior approval of the Administrator.

(vii) Title examination and title insurance, if any.

(viii) Such other items as may be authorized in advance by the Chief Benefits Director as appropriate for inclusion under this paragraph as proper local variances.

(2) A lender may charge and the veteran may pay a flat charge not exceeding 1 percent of the amount of the loan, provided that such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(3) In cases where a lender makes advances to a veteran during the progress of construction, alteration, improvement, or repair, either under a commitment of the Veterans Administration to issue a guaranty certificate or insurance credit upon completion, or where the lender would be entitled to guaranty or insurance on such advances when reported under automatic

procedure, the lender may make a charge against the veteran of not exceeding 2 percent of the amount of the loan for its services in supervising the making of advances and the progress of construction notwithstanding that the "holdback" or final advance is not actually paid out until after the construction, alteration, improvement, or repair is fully completed: *Provided*, That the major portion (51 percent or more) of the loan proceeds is paid out during the actual progress of the construction, alteration, improvement, or repair. Such charge may be in addition to the 1 percent charge allowed under paragraph (d)(2) of this section.

(4) In consideration, alteration, improvement or repair loans, including supplemental loans made pursuant to § 36.4355, where no charge is permissible under the provisions of paragraph (d)(3) of this section the lender may charge and the veteran may pay a flat sum not exceeding 1 percent of the amount of the loan. Such charge may be in addition to the 1 percent allowed under paragraph (d)(2) of this section.

(5) The fees and charges permitted under this paragraph are maximums and are not intended to preclude a lender from making alternative charges against the veteran which are not specifically authorized in the schedule provided the imposition of such alternative charges would not result in an aggregate charge or payment in excess of the prescribed maximum.

(6) *Allowable discounts.* (1) The veteran borrower subject to the limitations set forth in this paragraph, may pay a discount required by a lender when the proceeds of the loan will be used for any of the following purposes:

(A) To refinance existing indebtedness pursuant to 38 U.S.C. 1810(a)(5) or (8);

(B) To repair, alter or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 1810(a) (4) or (7);

(C) To construct a dwelling or farm residence on land already owned or to be acquired by the veteran, provided that the veteran did not or will not acquire the land directly or indirectly from a builder or developer who will be constructing such dwelling or farm residence;

(D) To purchase a dwelling from a class of sellers which the Administrator determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(ii) No such discount may be charged unless:

(A) The loan is submitted to the Administrator for prior approval;

(B) The amount of the discount is disclosed to the Administrator and the veteran prior to the issuance by the Administrator of the certificate of commitment. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment is issued without the approval of the Administrator;

(C) The discount has been determined by the Administrator to be reasonable in amount.

(iii) A veteran may pay the discount on an Acquisition and Improvement loan (as defined in § 36.4301(c)) provided:

(A) The veteran pays no discount on the acquisition portion of the loan except in accordance with paragraph (d)(6)(i)(D) of this section; and

(B) The discount paid on the improvements portion of the loan does not exceed the percentage of discount paid on the acquisition portion of the loan.

Acquisition and Improvement loans may be closed either on the automatic or prior approval basis.

(iv) All powers of the Administrator under paragraph (d)(6) of this section except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4342(b). The power of the Administrator to approve an increase in the discount after the commitment is issued is delegated to those officials designated by § 36.4335. (38 U.S.C. 1803(c)(1), 1810(a))

[13 FR 7275, Nov. 27, 1948, as amended at 19 FR 6717, Oct. 19, 1954; 20 FR 2485, Apr. 15, 1955; 20 FR 9180, Dec. 10, 1955; 27 FR 224, Jan. 9, 1962; 33 FR 6974, May 9, 1968; 35 FR 17180, Nov. 7, 1970; 36 FR 320, Jan. 9, 1971; 40 FR 34590, Aug. 18, 1975; 44 FR 47338, Aug. 13, 1979; 45 FR 53809, Aug. 13, 1980; 46 FR 43673, Aug. 31, 1981]

§ 36.4313 Advances and other charges.

(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness.

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; against gross amounts collected; in any accounting to the Administrator after payment of a claim under the guaranty, in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4321(a), or, in the computation of an insurance loss, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security,

(2) Court costs in a foreclosure or other proper judicial proceeding involving the security,

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security,

(4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness,

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or \$350 whichever is less,

(6) Any other expense or fee that is approved in advance by the Administrator. (38 U.S.C. 1820(a)(3))

In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraph (b) (4) and (5) of this section exceed \$350. (38 U.S.C. 1819(g), 1820(a)(3))

(c) Any advances or charges enumerated in paragraph (a) or (b) of this section may be included as specified in the holder's accounting to the Administrator, but they are not chargeable

to the debtor unless he or she otherwise be liable therefor.

(d) Advances of the type enumerated in paragraph (a) of this section and any other advances determined to be necessary and proper in order to preserve or protect the security may be authorized by employees designated in § 36.4342(b) in the case of any property constituting the security for a loan acquired by the Administrator or constituting the security for the unpaid balance of the purchase price owing to the Administrator on account of the sale of such property. Such advances shall be secured to the extent legal and practicable by a lien on the property.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this section, holders of condominium loans guaranteed or insured under 38 U.S.C. 1810(a)(6) shall not pay those assessments or charges allocable to the condominium unit which are provided for in the instruments establishing the condominium form of ownership in the absence of the prior approval of the Administrator.

[13 FR 7739, Dec. 15, 1948, as amended at 17 FR 9668, Oct. 25, 1952; 36 FR 320, Jan. 9, 1971; 40 FR 34591, Aug. 18, 1975; 45 FR 38056, June 6, 1980]

§ 36.4314 Extensions and reamortizations.

(a) The terms of repayment of any loan may by written agreement between the holder and the debtor be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a prepayment pursuant to § 36.4310, the balance of the indebtedness may, by written agreement between the holder and the debtor, be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity.

(c) In the event an additional loan is proposed to be made pursuant to

§ 36.4351 for the repair, alteration, or improvement of real property on which there is an existing loan guaranteed or insured under 38 U.S.C. Chapter 37, the terms of repayment of the prior loan may, by written agreement between the holder and the debtor, be recast to combine the schedule of repayments on the two loans, provided the entire indebtedness is repayable within the permissible maximum maturity of the original loan.

(d) Unless the prior approval of the Administrator has been obtained, any extension or reamortization agreed to by a holder which relieves any obligor from liability will release the liability of the Administrator under the guaranty or insurance on the entire loan. However, if such release of liability of an obligor results through operation of law by reason of an extension or other act of forbearance, the liability of the Administrator as guarantor or insurer will not be affected thereby, provided the required lien is maintained and the title holder is and will remain liable for the payment of the indebtedness: *And further provided*, That if such extension or act of forbearance will result in the release of the veteran, all delinquent installments, plus any foreclosure expenses which may have been incurred, shall have been fully paid.

(e) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed or insured loan.

[13 FR 7276, Nov. 27, 1948, as amended at 19 FR 4002, July 1, 1954; 24 FR 2653, Apr. 7, 1959]

§ 36.4315 Notice of default and acceptability of partial payments.

(a) *Reporting of defaults.* The holder of any guaranteed or insured loan shall give notice to the Administrator within 45 days after any debtor:

(1) Is in default by reason of nonpayment of any installment for a period of 60 days from the date of first uncured default (see § 36.4301(f)); or

(2) Is in default by failing to comply with any other covenant or obligation of such guaranteed or insured loan

which failure persists for a continuing period of 90 days after demand for compliance therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 180 days.

(b) *Partial payments.* A partial payment is a remittance on a loan in default (as defined in § 36.4301(g)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (b)(2) of this section, or upon the express waiver of the Administrator, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(2) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(i) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;

(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;

(iv) The payment is less than the amount agreed to in a written repayment plan;

(v) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(vi) A delinquency of any amount has continued for at least 6 months

since the account first became delinquent and no written repayment plan has been arranged;

(vii) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law;

(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. (38 U.S.C. 1803(c)(1))

[45 FR 31065, May 12, 1980]

§ 36.4316 Continued default.

(a) In the event any failure of the debtor to discharge the debtor's obligations under the loan continues for a period of 3 months, or for more than 1 month on an extended loan or on a term loan, the holder may at the holder's option then or thereafter, submit a claim for payment of the guaranty. The holder may also then or thereafter give the notice prescribed in § 36.4317.

(b) A claim for the guaranty, or the notice prescribed in § 36.4317 may be submitted prior to the time prescribed in paragraph (a) of this section in any case where any material prejudice to the rights of the holder or to the Administrator or hazard to the security warrants more prompt action.

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980]

§ 36.4317 Notice of intention to foreclose.

(See also § 36.4319.) Except upon the express waiver of the Administrator, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Administrator of a notice of intention to take such action: *Provided, That* (a) immediate action may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to

extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment), and (b) any right of a holder to repossess personal property may be exercised without prior notice to the Administrator; but notice of any such action taken shall be given by registered mail to the Administrator within ten days thereafter.

[13 FR 7276, Nov. 27, 1948]

§ 36.4318 Refunding of loans in default.

(a) Upon receiving a notice of default or a claim for a guaranty or a notice under § 36.4317, the Administrator may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefor to the Administrator or to another designated by the Administrator upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4325.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Administrator may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980]

§ 36.4319 Legal proceedings.

(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Administrator were a party to the proceeding, shall deliver to the Administrator, by mail or otherwise, by making such delivery to the loan guaranty officer at the office which granted the guaranty or the insurance, or other office to

which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale under power by a holder or one acting at the holder's behest (e. g. trustee or public official) shall be similarly delivered to the Administrator at or before the date of first publication, posting, or other notice, but in any event, except in emergency or when waived by the Administrator, not less than 10 days prior to date of sale. Copy of any other notice of sale served on the holder or of which the holder has knowledge shall be similarly delivered to the Administrator, including any such notice of sale under tax or other superior lien or any judicial sale.

(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be applicable in any proceeding to which the Administrator is a party, after the Administrator's appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Administrator is a party, original process and any other process prior to appearance, proper to be served on the Administrator, shall be delivered to the loan guaranty officer of the regional office of the Veterans' Administration having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the cause by his authorized attorney.

(e) After appearance of the Administrator by attorney all process and notice otherwise proper to serve on the Administrator before or after judgment, if served on his attorney of record shall have the same effect as if the Administrator were personally served within the jurisdiction of the court.

(f) If following a default the holder does not begin appropriate action within 2 months after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his option intervene in, or begin and prosecute to completion any action or proceeding, in his name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by him, or properly taxed against him, in any such action to which he is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies or defenses, in law or in equity, available to the Administrator.

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980]

§ 36.4320 Sale of security.

(a) Upon receipt by the Administrator of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed or insured loan, he may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of paragraphs (a) (1), (2), (3) and (4) of this section:

(1) If a minimum amount for credit to the indebtedness has been specified in relation to a sale of real property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall credit to the indebtedness the amount so specified. The holder there-

upon may retain the property or not later than 15 days after the date of sale advise the Administrator of his election to convey or transfer the property, or the rights thereto derived through the sale, to the Administrator.

(2) If a minimum amount is specified in relation to a sale of personal property and the holder is the successful bidder at the sale for an amount not in excess of such minimum amount, the holder shall sell the property pursuant to paragraph (b) of this section and the amount realized from the resale of the property shall govern, in lieu of the specified minimum amount, in the final accounting for determining the rights and liabilities of the holder and the Administrator.

(3) If a minimum amount has been specified by the Administrator and:

(i) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,

(ii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified less expenses, within the provisions and limitations of § 36.4313, deducted from the sales proceeds,

(iii) The holder is the successful bidder at the sale for an amount in excess of the specified amount the indebtedness shall be credited with the proceeds of the sale, but the holder shall not have the option provided by paragraph (a)(1) of this section to convey the property to the Administrator unless a bid in excess of the specified amount was made pursuant to paragraph (d) of this section.

(4) If a minimum amount has not been specified by the Administrator under paragraph (a)(1) or (2) of this section, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d) of this section, and the provisions of paragraph (a)(1) of this section which extend to the holder the option of conveying or transferring the property to the Administrator shall not be applicable.

(b) In the event that any real property which is security for a guaranteed

or insured loan is to be acquired by a holder in a manner other than as provided in paragraph (a) or (c) of this section (e.g., by strict foreclosure or by the termination without a public sale of the purchaser's interest in a land sale contract), the holder shall notify the Administrator of the contemplated acquisition and the Administrator may specify the amount which shall be credited to the indebtedness of the borrower on account of the value of such property. If an amount is specified as aforesaid, the holder, not later than 15 days after such acquisition, may advise the Administrator of his election to convey or transfer the property to the Administrator. If an amount is not specified as aforesaid, the holder shall not have the right to such election and the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reason of any future disposition of the property by the holder. If personal property has been repossessed or otherwise acquired by a holder and no public sale is proposed or required to be held to entitle the holder to effect a further disposition thereof, or if the holder is the successful bidder at the sale of personal property as provided in paragraph (a)(2) of this section, the holder shall sell the property within a reasonable time. The holder shall submit to the Administrator a written advice setting forth the price, terms, conditions, and the expenses of the proposed sale at least 10 days in advance thereof, and the Administrator shall thereupon either assent to such sale in which event the holder shall credit against the indebtedness the net proceeds of the sale, or upon agreement to indemnify the holder to the extent of any increased or resultant loss thereon, the Administrator may specify the minimum net price for which the security may be sold. If such amount has been specified, the holder shall sell the personal property within a reasonable time in the open market for the best price obtainable: *Provided*, That the prior approval of the Administrator shall be obtained if the property is to be sold for a net amount less than the specified amount, or if the property is to be sold on terms other than all

cash. The ultimate net amount realized by the holder from such sale shall be reported by the holder to the Administrator in an accounting which will determine their respective rights and liabilities.

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Administrator to the terms of such proposal shall be obtained in advance of such conveyance or transfer. In consenting thereto the Administrator may specify the amount which the holder shall be required to allow for the property in any subsequent accounting to the Administrator. In the event that the Administrator specifies an amount as aforesaid, the holder, not later than 15 days after such conveyance or transfer may advise the Administrator of his election to convey or transfer the property to the Administrator.

(d) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Administrator and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this section and for the purpose of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reason of such bid.

(e) If the Administrator has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Administrator of such damage.

(f) The holder in accounting to the Administrator in connection with the disposition of any property in accordance with paragraph (a), (b), (c), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313. Interest may be included at a rate not to exceed that specified in § 36.4311(c) on the unpaid principal balance of the indebtedness to the date of public sale referred to in paragraph (a)(1) of this section, or to the date of acquisition of real property by the holder referred to in paragraph (b) or (c) of this section, or to the date of the private sale of personal property referred to in paragraph (b) of this section, as the case may be. In connection with the conveyance or transfer of property to the Administrator the holder may include in accounting to the Administrator the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(1) United States Revenue Stamps, State and documentary stamp taxes as may be required.

(2) The customary cost of obtaining evidence of title in favor of the Administrator as specified in paragraph (h)(5) of this section but not including title evidence obtained incident to the making of the loan or any expenses incurred to clear title defects.

(3) Amounts expended for taxes, special assessments or ground rents, including such payments which are specified in paragraph (h)(4) of this section.

(4) Recording fees.

(5) Any other expenditures in connection with the property which are approved by the Administrator.

(g) In the event a holder elects to convey or transfer the property to the Administrator pursuant to paragraph (a), (b), or (c) of this section, the consideration to be paid by the Administrator in return for the property shall be the specified amount: *Provided*, That if a claim under the guaranty was previously paid, the consideration payable for the property shall be an amount equal to the indebtedness (less the amount previously paid on the

guaranty) or the specified amount, whichever is less. If no claim under the guaranty was previously paid, the holder may, pursuant to § 36.4321(b) submit a claim within the maximum guaranty liability for the difference between the specified amount and an amount equal to the indebtedness. In the case of an insured loan, the holder may submit a claim for the difference between an amount equal to the indebtedness and the specified amount pursuant to § 36.4374.

(h) The conveyance or transfer of any property to the Administrator pursuant to paragraphs (a), (b), or (c) of this section shall be subject to the following provisions:

(1) If the holder's notice to the Administrator electing to convey or transfer the property precedes the acquisition of the property by the holder and he thereafter acquires the property, he shall promptly after such acquisition advise the Administrator thereof. Such advice, or the notice of election if given subsequent to acquisition, shall state the amount of the successful bid (if the property was acquired by the holder at public sale) and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date.

(2) The holder shall not cancel any insurance in force when he acquires the property. Coincident with the notice of election to convey or transfer the property to the Administrator or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall obtain endorsements on all such insurance policies naming the Administrator as an assured, as his interest may appear. Such insurance policies shall be forwarded to the Administrator at the time of the conveyance or transfer of the property to the Administrator or as soon thereafter as feasible.

(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by anyone else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not

preclude the holder from conveying or transferring the property to the Administrator. Except with the prior approval of the Administrator, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Administrator shall be paid by the holder if bills therefor are obtainable before such conveyance or transfer.

(5) Each conveyance or transfer of real property to the Administrator pursuant to this section shall be acceptable if the holder thereby covenants or warrants against the acts of himself and those claiming under him (e.g., by special warranty deed) and if it vests in the Administrator or will entitle him to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. Any title so acceptable will not be unacceptable to the Administrator by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b):

Provided, That (i) at the time of conveyance or transfer to the Administrator there has been no breach of any conditions affording a right to the exercise of any reverter, except that title will not be unacceptable to the Administrator by reason of a violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Administrator of any of the following evidences of title issued by an institution or person satisfactory to the Administrator, in form satisfactory to him, showing that title to the proper-

ty of the quality specified in this paragraph is or will be vested in the Administrator:

(a) A title policy insuring the Administrator in an amount approximately equal to the consideration for the property, or a commitment therefor; or

(b) A certificate of record title; or

(c) An abstract of title accompanied by a legal opinion as to the quality of such title of record; or

(d) A Torrens or similar title certificate; or

(e) Such other evidence of title as the Administrator may approve.

In lieu of such title evidence, the Administrator will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 1802(d) or from a holder of financial responsibility satisfactory to the Administrator. In any case where the holder does not deliver evidence of title of the character specified in this subparagraph, the holder to aid the Administrator in his determination of acceptability of title shall without expense to the Administrator furnish such evidence of title, including survey, if any, as may have been obtained by the holder incident to the making of the loan or attendant to the foreclosure.

(6) Except with respect to matters covered by any covenants or warranties of the holder, the acceptance by the Administrator of a conveyance or transfer by the holder shall conclude the responsibility of the holder to the Administrator under the regulations of this subpart with respect to the title and in the event of the subsequent discovery of title defects, the Administrator shall have no recourse against the holder with respect to such title other than by reason of such covenants and warranties.

(7) As between the holder and the Administrator, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (h)(10) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the

date of acquisition by the holder to the date such risk of loss is assumed by the Administrator. Such risk of loss is assumed by the Administrator from the date of receipt of the holder's election to convey or transfer the property to the Administrator or, in the event of receipt of notice of such election prior to acquisition, from the date of the Administrator's receipt of notice of acquisition by the holder:

Provided, That if custody over the property has not been delivered by the holder to the Administrator on the date when the Administrator otherwise would have assumed the risk of loss, the Administrator's assumption of the risk of loss will be deferred until such custody over the property is delivered, or until the property has been conveyed or transferred to the Administrator. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Administrator at the time the property is transferred. In any case wherein pursuant to the Veterans' Administration regulations rejection of the title is legally proper, the Administrator may surrender custody of the property as of the date specified in the Administrator's notice thereof to the holder. The Administrator's assumption of such risk shall terminate upon such surrender.

(8) The holder shall not be liable to the Administrator for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items.

(9) The Administration shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(10) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 1810(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Administrator until the Administrator expressly assumes such responsibility or until conveyance of the property to the Administrator, whichever first occurs. The holder shall have the

right to convey such property to the Administrator only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance thereof, if the Administrator agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(i) (1) The terms "date of sale" or "date of acquisition" as used in this section are defined as the date of the event (e.g., sale, confirmation of sale when required under local practice, delivery of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term "property" or "real property" as used in this section shall include (i) a leasehold estate therein which at the time of closing the loan was of not less duration than prescribed by § 36.4350(a)(2), and (ii) the rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Administrator may have under § 36.4325. The Chief Benefits Director, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia: *Provided*, That no such deviation shall impair the rights of any holder not consenting thereto with respect to loans made or approved prior to the date the holder is notified of such action.

113 FR 7739, Dec. 15, 1948, as amended at 20 FR 9180, Dec. 10, 1955; 24 FR 2654, Apr. 7, 1959; 28 FR 11505, Oct. 29, 1963; 33 FR 6975,

May 9, 1968; 33 FR 18026, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 36 FR 320, Jan. 9, 1971; 40 FR 34591, Aug. 18, 1975]

§ 36.4321 Computation of guaranty claims; subsequent accountings.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure, or (2) in nonjudicial foreclosures the date of publication of the first notice of sale, or (3) in cases in which the security is repossessed without a judgment, decree or foreclosure the date the holder repossesses the security, or (4) if no security is available, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or set-offs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of the claim, shall be reported to the Administrator incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall forthwith pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.

(d) Any allowable expenditures or costs paid subsequent to the date of

computation of the claim and before accounting to the Administrator, and accrued interest from the date of claim to the date of sale, may be deducted by the holder from the proceeds of the sale of the security, or may be included in the accounting to the Administrator on such loan.

[13 FR 7277, Nov. 27, 1948, as amended at 19 FR 4002, July 1, 1954; 40 FR 34591, Aug. 18, 1975]

§ 36.4322 Computation of indebtedness.

In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4318 (a), or other accounting to the Administrator, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

[13 FR 7278, Nov. 27, 1948]

§ 36.4323 Subrogation and indemnity.

(a) The Administrator shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under his contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Administrator with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such

instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Administrator may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran.

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him under 38 U.S.C. Chapter 37, the Administrator, upon application made by such veteran, shall issue to the veteran a release relieving him of all further liability to the Administrator on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Administrator has determined, after such investigation as he may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1817. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Administrator may require. Release of the veteran from liability to the Administrator will not impair or otherwise affect the Administrator's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. Any release of liability

granted to a veteran by the Administrator shall inure to the spouse of such veteran. The release of the veteran from liability to the Administrator will constitute the Administrator's prior approval to a release of the veteran from liability on the loan by the holder thereof.

(g) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed or insured loan obtained by him under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 1817(a) and a default subsequently occurs which results in liability of the veteran to the Administrator on account of the loan, the Administrator may relieve the veteran of such liability if he determines that:

(1) A transferee either immediate or remote is legally liable to the Administrator for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Administrator is found to have been a satisfactory credit risk at the time he acquired the property.

[13 FR 7278, Nov. 27, 1948, as amended at 24 FR 2654, Apr. 7, 1959; 33 FR 5362, Apr. 4, 1968; 37 FR 24034, Nov. 11, 1972]

§ 36.4324 Release of security.

(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without the prior approval of the Administrator, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of \$500: *Provided*, That the aggregate of the reduction in the original value of the security resultant from such releases without the Administrator's prior approval does not exceed \$500.

(b) Holder may release from the lien personal property including crops without the prior approval of the Administrator.

(c) Except upon full payment of the indebtedness or upon the prior approval of the Administrator, the holder shall not release a lien under paragraph (a) or (b) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(d) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(e) The holder shall notify the Administrator of any such release or substitution of security within 30 days after completion of such transaction.

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Administrator shall release the obligation of the Administrator as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 and if, after receiving such notice, the Administrator shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Administrator indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contempora-

neous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C., Chapter 37; or (4) the release of an obligor or obligors as provided in § 36.4314(d).

[13 FR 7278, Nov. 27, 1948, as amended at 24 FR 6315, Aug. 6, 1959; 35 FR 7728, May 20, 1970; 46 FR 43673, Aug. 31, 1981]

§ 36.4325 Partial or total loss of guaranty or insurance.

(a) Subject to the incontestable provisions of 38 U.S.C. 1821 as to loans guaranteed or insured on or subsequent to July 1, 1948, there shall be no liability on account of a guaranty or insurance, or any certificate or other evidence thereof, with respect to a transaction in which a signature to the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the certificate of discharge or the certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

(1) Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any wilful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty or the insurance credit, shall relieve the Administrator of liability, or, as to loans guaranteed or insured on, or subsequent to July 1, 1948, shall constitute a defense against liability on account of the guaranty or insurance of the loan in respect to which the wilful misrepresentation, or the fraud, is practiced: *Provided*, That if a misrepresentation, although material, is not made wilfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, a holder shall obtain the required lien on property the title to which is such as to be acceptable to

prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated: *Provided*, That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b) and if such holder fails in this respect or fails to comply with 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans with respect to:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans,

(2) Inclusion of power to substitute trustees (§ 36.4327),

(3) The procurement and maintenance of insurance coverage (§ 36.4326),

(4) Advice to Administrator as to default (§ 36.4315),

(5) Notice of intention to begin action (§ 36.4317),

(6) Notice to the Administrator in any suit or action, or notice of sale (§ 36.4319),

(7) The release, conveyance, substitution, or exchange of security (§ 36.4324),

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted (§ 36.4328),

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(10) The taking into consideration of limitations upon the quantum or quality of the estate or property (§ 36.4350(b)),

(11) Any other requirement of 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans which does not by the terms of said chapter or the regulations concerning guaranty or insurance of loans to veterans result in relieving the Administrator of all liability with respect to the loan,

no claim on the guaranty or insurance shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an un-

willful misrepresentation occurred, until the amount by which the ultimate liability of the Administrator would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Administrator shall be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Administrator. To the extent the loss resultant from the failure or misrepresentation prejudices the Administrator's right of subrogation acceptance by the holder of the guaranty or insurance payment shall subordinate the holder's right to those of the Administrator.

(c) If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4318 (a), the fraud, misrepresentation or failure to comply with the regulations in this subpart as provided in this section is discovered and the Administrator determines that an increased loss to the government resulted therefrom the transferor or person to whom such payment was made shall be liable to the Administrator for the amount of the loss caused by such misrepresentation or failure.

[13 FR 7741, Dec. 15, 1948, as amended at 24 FR 2654, Apr. 7, 1959]

§ 36.4326 Hazard insurance.

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. Flood insurance will be required in respect to any loan closed on and after March 2, 1974, if the security is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and in which the sale of flood insurance is available under the national flood insurance program. The amount

of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the national flood insurance program, whichever is less. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.

[39 FR 7785, Feb. 28, 1974]

§ 36.4327 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated.

[13 FR 7279, Nov. 27, 1948]

§ 36.4328 Capacity of parties to contract.

Nothing in §§ 36.4300 to 36.4375, inclusive, shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

[13 FR 7279, Nov. 27, 1948]

§ 36.4329 Geographical limits.

Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C. Chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

[46 FR 43673, Aug. 31, 1981]

§ 36.4330 Accounting records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Administrator ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Administrator or computation of a claim any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The Administrator has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a holder pertaining to loans guaranteed or insured by the Administrator.

[13 FR 7279, Nov. 27, 1948, as amended at 25 FR 14026, Dec. 31, 1960; 40 FR 34591, Aug. 18, 1975]

§ 36.4331 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when spe-

cifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. Chapter 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned.

(b) Where notice of intention to suspend is furnished a lender, the notice shall state the charges against the lender and the specifications on which the charges are based. Such notice shall also advise the lender that no later than 20 days from the date of the receipt of the notice it may file written answer to the charges with the Director and, if desired, may also file a written request that lender be permitted to appear before the Veterans Administration and state why suspension should not be effected. In the event the lender does not file written answer to the charges against it and does not make or request permission to make an appearance before the Veterans Administration within the time specified, suspension may be effected immediately, without further authorization, by the Director who will advise the Chief Benefits Director of the action taken.

(c) If an appearance before the Veterans Administration is requested by the lender, the Director will arrange for and notify the lender of the time and place thereof and will appoint a committee of three Veterans Administration employees to hear the lender's statement. The District Counsel or designee will represent the Veterans Administration at such appearance. The proceedings of the committee will be informal. The lender will be informed of the charges and specifications which constitute the basis of the contemplated suspension and will be

afforded an opportunity to state either orally or in writing why suspension should not be effected. Written or oral statements of the lender, or its officers, agents, or representatives other than counsel may be required by said District Counsel or designee to be made under oath if in the discretion of said District Counsel or designee the nature of the statement is such as to make that procedure advisable. In the event an oral statement is made under oath, a verbatim transcript of such statement will be made. Authority is hereby delegated to the District Counsel or designee to administer oaths to each party making the statement under oath.

(d) If within the specified time written answer is filed with the Director or the lender makes an appearance, the Director will hold the suspension in abeyance and submit a full report to the Chief Benefits Director including recommendations as to the action to be taken in the case and will await instructions of the Chief Benefits Director before proceeding further.

(e) Where suspension is effected, the lender will be advised in writing of the effective date of the suspension and, unless such was previously furnished, will be given written notice of the charges against the lender and the specifications on which such charges are based. Any lender who is suspended shall have the right to apply to the Chief Benefits Director for termination or modification of the suspension and, except when the suspension is based upon action taken by the Secretary of Housing and Urban Development, shall also have the right to apply to the Chief Benefits Director for a formal hearing at which opportunity shall be afforded to show why suspension should be modified or terminated. The Chief Benefits Director may postpone the holding of a hearing for a reasonable period in any case in which the Department of Justice or U.S. Attorney advises or requests postponement pending the trial of a criminal or civil case or the institution of criminal or civil proceedings against the lender. In the absence of such request, the Chief Benefits Director, as soon as it is feasible to do so, shall designate such time and place as may be

deemed appropriate for such hearing, shall notify the lender thereof, and shall appoint no fewer than three persons, who shall constitute the board, to conduct the hearing. The District Counsel or designee shall represent the Veterans Administration. Authority is hereby delegated to the presiding officer of the board designated to conduct such hearing to administer oaths to witnesses. The Director may issue subpoenas for witnesses or records as provided in 38 U.S.C. 3311. The lender shall have the right to appear at such hearing in person or by attorney, or both, and to introduce evidence showing why such suspension should be modified or terminated. If the Veterans Administration has knowledge of a pending or contemplated civil or criminal action by the United States against the lender, arising from the facts on which the suspension of the lender was based, the District Counsel of the regional office concerned will inform the responsible U.S. Attorney of the date and place of hearing and keep said U.S. Attorney advised of all developments.

(f) As soon as is practicable after the conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The lender will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. The lender shall have the right within 14 days after receipt of such transcript and statement to file with the Chief Benefits Director a brief of either, or both, facts and law.

(g) Upon receipt of the transcript of the hearing, the findings and recommendations of the board, and the brief of the lender, if one is filed, the Chief Benefits Director shall make a determination in the case, basing such action on such record. Written notice of such determination shall be given to the lender. The lender shall have the right to appeal such decision to the Administrator by giving notice in writing to the Chief Benefits Director within 10 days after the receipt of notice of such determination. In the event of such appeal, the Administrator will decide the matter finally on the record and will notify the lender

of the decision in writing. If the lender does not appeal to the Administrator within the period specified, the determination by the Chief Benefits Director shall be final.

(h) Except where acquisition is pursuant to a binding contract antedating the suspension, the purchase of a guaranteed or insured loan by a lender after the date of its suspension shall cancel the guaranty or insurance on such loan: *Provided*. The notice to the lender of the suspension expressly bars such lender from acquiring by purchase loans guaranteed or insured by the Administrator.

(i) If after determination by the Chief Benefits Director or the Administrator, as provided in paragraph (g) of this section, the suspension is terminated, all rights and interest of the lender shall be restored. However, any lender suspended by reason of action taken by the Secretary of Housing and Urban Development is not afforded the rights under paragraph (g) of this section and the suspension in any case will be terminated by the Chief Benefits Director only if the lender furnishes satisfactory evidence of his or her reinstatement by the Secretary of Housing and Urban Development.

[21 FR 4014, June 12, 1956, as amended at 24 FR 5370, July 2, 1959; 27 FR 11669, Nov. 27, 1962; 40 FR 34591, Aug. 18, 1975]

§ 36.4332 Delivery of notice.

Any notice required by §§ 36.4300 to 36.4375, inclusive, to be given the Administrator must be in writing, and delivered, by mail or otherwise, to the Veterans' Administration office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran obligor and the file number assigned to the case by the Administrator, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by registered mail when so provided by §§ 36.4300 to 36.4375, inclusive. This section does not apply to legal process (see § 36.4319).

[13 FR 7279, Nov. 27, 1948]

§ 36.4333 Satisfaction of indebtedness.

Upon full satisfaction of a guaranteed loan by payment or otherwise it shall be the duty of the holder to cancel the endorsement, if any, of the Administrator; and forthwith inform the Administrator of such cancellation. In the event the Administrator's liability thereon is evidenced by an instrument separate from the instrument evidencing the debtor's obligation, the instrument evidencing the obligation of the Administrator shall be returned to the Veterans' Administration office issuing same, or to the central office, with the holder's cancellation or endorsement of release thereon.

[13 FR 7279, Nov. 27, 1948]

§ 36.4334 Incorporation by reference.

Regulations issued under 38 U.S.C. chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

[24 FR 2655, Apr. 7, 1959]

§ 36.4335 Supplementary administrative action.

Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty or insurance of loans to veterans, the Chief Benefits Director, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Administrator, is hereby authorized, if he or she finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4342 is hereby authorized to grant similar relief if he or she finds the failure or

error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(a) The requirement in § 36.4303(a) that a lender of a class described under 38 U.S.C. 1802(d) originating a loan under the automatic (nonprior approval) procedure report such loan for issuance of guaranty or insurance evidence within 60 days following full disbursement. Waiver of the lender's failure to report the loan within the 60-day period shall be confined to cases where the loan is not in default. (38 U.S.C. 1803(c)(1))

(b) The requirement in § 36.4303(d) that a lender originating a loan under a certificate of commitment report the loan for issuance of guaranty or insurance evidence within 60 days following actual payment of the full proceeds of the loan. In such cases it is not necessary that a finding be made that the loan is not in default. (38 U.S.C. 1803(c)(1))

(c) The requirement in § 36.4314(e) that a holder promptly forward an advice of the terms of any agreement effecting a reamortization or extension of a loan.

(d) The 45-day requirement in § 36.4315(a) concerning the giving of notice of default.

(e) The requirement in § 36.4317 that a holder give 30 days advance notice of its intention to foreclose.

(f) The requirement in § 36.4317(b) that a holder give notice of repossession of personal property within 10 days after such repossession has occurred.

[20 FR 4855, July 8, 1955, as amended at 20 FR 9180, Dec. 10, 1955; 23 FR 2217, Apr. 4, 1958; 27 FR 224, Jan. 9, 1962; 40 FR 34592, Aug. 18, 1975; 45 FR 53809, Aug. 13, 1980]

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) Evidence of guaranty or insurance shall be issued in respect to a loan for any of the purposes specified in 38 U.S.C. 1810(a) only if:

(1) The proceeds of such loan have been used to pay for the property purchased, constructed, repaired, refinanced, altered, or improved and;

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 1810(a)(8), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Administrator, and

(ii) For the purpose of determining the reasonable value of a graduated payment mortgage loan to purchase a new home, the reasonable value of the property as of the time the loan is made shall be calculated to increase at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property exceed 115 percent of the initially established reasonable value, and (38 U.S.C. 1803(d)(2))

(3) The veteran has certified, in such form as the Administrator may prescribe, that the veteran has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) Notwithstanding that the aggregate of the loan amount in the case of loans for the purposes specified in paragraph (a) of this section, and the amount remaining unpaid on taxes, special assessments, prior mortgage indebtedness, or other obligations of any character secured by enforceable superior liens or a right to such lien existing as of the date the loan is closed exceeds the reasonable value of such property as of said date and that evidence of guaranty or insurance credit is issued in respect thereof, as between the holder and Administrator (for the purpose of computing the claim on the guaranty or insurance and for the purposes of § 36.4320, and all accountings), the indebtedness which is the subject of the guaranty or insurance shall be deemed to have been reduced as of the date of the loan by a sum equal to such excess, less any amounts

secured by liens released or paid on the obligations secured by such superior liens or rights by a holder or others without expense to or obligation on the debtor resulting from such payment, or release of lien or right; and all payments made on the loan shall be applied to the indebtedness as so reduced. Nothing in this paragraph affects any right or liability resulting from fraud or willful misrepresentation.

(38 U.S.C. 210(c), 1803(c)(1))

[33 FR 6975, May 9, 1968, as amended at 35 FR 17180, Nov. 7, 1970; 40 FR 34592, Aug. 18, 1975; 46 FR 43673, Aug. 31, 1981; 47 FR 15139, Apr. 8, 1982]

§ 36.4337 [Reserved]

§ 36.4338 Death or insolvency of holder.

(a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a trust, or deposit, or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a setoff and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance:

Provided, That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at the holder's option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the holder's property; or in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a) of this section.

[13 FR 7279, Nov. 27, 1948, as amended at 40 FR 34593, Aug. 18, 1975]

§ 36.4339 Qualification for designated fee appraisers.

To qualify for approval as a designated fee appraiser, an applicant must show to the satisfaction of the Administrator that his or her character, experience, and the type of work in which he or she has had experience for at least 5 years qualifies the applicant to competently appraise and value within a prescribed area the type of property to which the approval relates.

[40 FR 34593, Aug. 18, 1975]

§ 36.4340 Restriction on designated fee appraisers.

(a) A designated fee appraiser shall not make an appraisal, excepting of alterations, improvements, or repairs to real property entailing a cost of not more than \$3,500, if such appraiser is an officer, director, trustee, employer, or employee of the lender, contractor, or vendor.

(b) An appraisal made by a designated fee appraiser shall be subject to

review and adjustment by the Administrator. The amount determined to be proper upon any such review or adjustment shall constitute the "reasonable value" for the purpose of determining the eligibility of the related loan.

[15 FR 4398, July 12, 1950, as amended at 24 FR 2655, Apr. 7, 1959; 43 FR 51016, Nov. 2, 1978]

§ 36.4341 Suspension or removal of appraisers.

Upon it appearing that an appraiser designated by the Administrator is not qualified to make appraisals of the type for which appointed or has engaged in any practice detrimental to the interests of the veteran, the lender, or the Government, the appraiser may be suspended or removed by the Administrator: *Provided*, That such action shall not prejudice the guaranty or insurance right of a lender who has in good faith acted in reliance upon a designation of such appraiser prior to receiving notice of such suspension or removal.

[40 FR 34593, Aug. 18, 1975]

§ 36.4342 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Veterans Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to the guaranty or insurance of loans and the rights and liabilities arising therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of 38 U.S.C. 1820(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized

to execute and deliver (with or without acknowledgment) for, and on behalf of, the Administrator, evidence of guaranty or of insurance credits and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property, or, of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b) Designated positions:

Chief Benefits Director
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be re-delegated.

(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Administrator under 38 U.S.C. 210(c) or 1815(b) or to sue, or enter appearance for and on behalf of the Administrator, or confess judgment against the Administrator in any court without the Administrator's prior authorization; or (2) to include the authority to exercise those powers delegated to the Chief Benefits Director, or the Director, Loan Guaranty Service, under §§ 36.4320(j), 36.4335 or 36.4343:

Provided, That, anything in the regulations concerning guaranty or insurance of loans to veterans to the contrary notwithstanding, any evidence of guaranty or insurance issued on or after July 1, 1948, by any of the employees designated in paragraph (b) of this section or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Administra-

tor, subject to the defenses reserved in 38 U.S.C. 1821.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours. (38 U.S.C. 210(c)(1), 1820(a)(5))

[23 FR 2217, Apr. 4, 1958, and 24 FR 2655, Apr. 7, 1959, as amended at 40 FR 34593, Aug. 18, 1975; 43 FR 60460, Dec. 28, 1978; 45 FR 21243, Apr. 1, 1980; 46 FR 43673, Aug. 31, 1981]

§ 36.4343 Cooperative loans.

(a) Any loan, which is (1) related to an enterprise in which more than 10 individuals will participate; or (2) to be made for the purchase or construction of residential units in any housing development, cooperative or otherwise, the title to which development or to the individual units therein is not to be held directly by the veteran-participants, or which contemplates the ownership or maintenance of more than three units or of their major appurtenances in common, to be eligible for guaranty or insurance shall require prior approval of the Chief Benefits Director, or the Director, Loan Guaranty Service, who may issue such approval upon such conditions and limitations deemed appropriate, not inconsistent with the provisions of 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) The issuance of such approval with respect to a residential development under paragraph (a)(2) of this section also shall be subject to such conditions and stipulation as in the judgment of the approving officer are possible and proper to (1) afford reasonable and feasible protection to the

rights of the Government as guarantor or insurer, and as subrogee, and to each veteran-participant against loss of his or her respective equity consequent upon the failure of other participants to discharge their obligations; (2) provide for a reasonable and workable plan for the operation and management of the project; (3) limit the personal liability of each veteran-participant to those sums allocable on a proper ratable basis to the purchase, cost, and maintenance of his or her individual unit or participating interest; (4) limit commercial features to those reasonably calculated to promote the economic soundness of the project and the living convenience of the participants, retaining the essential character of a residential project.

(c) No such project, development, or enterprise may be approved which involves an initial grouping of more than 500 veterans, or a cost of more than five million dollars, unless it is conclusively shown to the satisfaction of the approving officer that a greater number of veterans or dollar amount will assure substantial advantages to the veteran-participants which could not be achieved in a smaller project.

(d) When approved as in this section provided, and upon performance of the conditions indicated in the prior approval, proper guaranty certificate or certificates may be issued in connection with the loan or loans to be guaranteed on behalf of eligible veterans participating in the project, development or enterprise not to exceed in total amount the sum of the guaranties applied for by the individual participants and for which guaranty each participant is then eligible.

(e) In lieu of guaranty as authorized in paragraph (d) of this section, insurance shall be available on application by the lender and all veterans concerned. In such case the insurance credit shall be limited to 15 percent of the obligation of the veteran applicant (subject to available eligibility) and the total insurance credit in respect to the veterans' loans involved in the project shall not exceed 15 percent of the aggregate of the principal sums of the individual indebtedness incurred by the veterans participating in the pro-

ject for the purpose of acquiring their respective interests therein.

[13 FR 7280, Nov. 27, 1948, as amended at 20 FR 9180, Dec. 10, 1955; 24 FR 2656, Apr. 7, 1959; 40 FR 34593, Aug. 18, 1975; 46 FR 43673, Aug. 31, 1981]

§ 36.4344 [Reserved]

§ 36.4345 Waivers, consents, and approvals; when effective.

No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Administrator or the subordinate officer to whom authority has been delegated by the Administrator.

[13 FR 7281, Nov. 27, 1948]

§ 36.4346 [Reserved]

§ 36.4347 Minimum property and construction requirements.

No loan for the purchase or construction of residential property shall be eligible for guaranty or insurance unless such property complies or conforms with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Administrator pursuant to 38 U.S.C. 1804(a).

[24 FR 2656, Apr. 7, 1959]

§§ 36.4348-36.4349 [Reserved]

§ 36.4350 Estate of veteran in real property.

(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a guaranteed or insured loan, or owned by him and on which construction, or repairs, or alterations or improvements are to be made, shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assign-

able and transferable will be considered an acceptable estate if it is determined by the Chief Benefits Director, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located, (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and, (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien.

The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section.

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

- (1) Encroachments;
- (2) Easements;
- (3) Servitudes;
- (4) Reservations for water, timber, or subsurface rights;

(5) Sale and lease restrictions:

(i) Except as to condominiums, the right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right was established by an instrument recorded prior to December 1, 1976, and by the terms thereof is exercisable only if—

(a) An owner elects to sell,
(b) The option price is not less than the price at which the then owner is willing to sell to another, and

(c) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document, on or before December 1, 1976, will not fail to comply with the requirements of paragraph (a) of this section by reason of:

(a) Prohibition against leasing a unit for a period of less than 6 months.

(b) The existence of a right of first option to purchase or right to provide a substitute buyer reserved to the condominium association provided such option or right is exercisable only if:

(1) An owner elects to sell,

(2) The option price is not less than the price at which the then owner is willing to sell to another,

(3) The terms and conditions under which the option price is to be paid are identical to or are not less favorable to the owner than the terms and conditions under which the owner was willing to sell to the owner's prospective buyer, and

(4) Notice of the association's decision to exercise the option must be mailed to the owner by registered or certified mail within 30 days after notice is mailed by registered or certified mail to the address of the association last known to the owner of the owner's election to sell, stating the price, terms of sale, and the identity of the proposed vendee;

(iii) Any property subject to a restriction on the owner's right to convey to any party of the owner's choice, which restriction is established by a document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A prohibition or restriction on leasing an individual unit in a condominium will not cause the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with § 36.4358(c).

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by the Administrator in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan;

Provided, That the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C. Chapter 37.

(c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of residential property and determined by the Administrator as not materially affecting the reasonable value of such property:

(1) *Building or use restrictions.* *Provided*, (i) no violation exists, (ii) the proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and (iii) any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan.

(2) *Violations of racial and creed restrictions.* Violations of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(3) *Violations of building or use restrictions of record.* Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and which do not provide for a reversion or termination of title, or condemnation by municipal authorities, or, a lien for liquidated damages which may be superior to the lien of the guaranteed or insured mortgage.

(4) *Easements.* (i) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights thereof do not interfere with the use of any of the buildings or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining prop-

erty, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) *Encroachments.* (i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subject boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) *Variations of lot lines.* Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to Veterans Administration and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

(38 U.S.C. 210(c), 1803(c), 1819(g))

[15 FR 4550, July 18, 1950, as amended at 24 FR 2656, Apr. 7, 1959; 33 FR 18026, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 41 FR 44039, Oct. 6, 1976; 44 FR 47338, Aug. 13, 1979; 45 FR 55720, Aug. 21, 1980]

EDITORIAL NOTE: Paragraphs (b)(5)(iii) and (6)-(8) have previously appeared in this section incorrectly codified as (b)(5)(ii)(b)(5)-(8). The Veterans Administration will publish a document in the *FEDERAL REGISTER* at a later date to correct the codification.

§ 36.4351 Loans, first, second, or unsecured.

Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or

for the alteration, improvement, or repair thereof, and for more than \$1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than \$1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for \$1,500 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4350(a).

[43 FR 51016, Nov. 2, 1978]

§ 36.4352 Tax, special assessment and other liens.

Tax liens, special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Administrator, Chief Benefits Director, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Administrator may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Administrator determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Administrator's determination must have been made prior to the recordation of the covenant.

[40 FR 34594, Aug. 18, 1975]

§ 36.4353 Combination residential and business property.

If otherwise eligible, a loan for the purchase or construction of a combination of residential property and business property which the veteran proposes to occupy in part as a home will be eligible under 38 U.S.C. 1810, if the property is primarily for residential purposes and no more than one business unit is included in the property.

[40 FR 34594, Aug. 18, 1975]

§ 36.4354 [Reserved]

§ 36.4355 Supplemental loans.

(a) Any loan for the alteration, repair, improvement, extension, replacement, or expansion of a home, with respect to which a guaranteed or insured obligation of the borrower is currently outstanding, may be reported for guaranty or insurance coverage, if such loan is made by the holder of the currently outstanding obligation, notwithstanding the fact no guaranty entitlement remains available to the borrower:

Provided, That if no entitlement remains available the maximum amount payable on the revised guaranty shall not exceed the amount payable on the original guaranty on the date of closing the supplemental loan, and the percentage of guaranty shall be based upon the proportion the said maximum amount bears to the aggregate indebtedness, or, in the case of an insured loan, no additional credit to the holder's insurance account may be made: *Provided further*, That the prior approval of the Administrator shall be required if

(1) The loan will be made by a lender who is not the holder of the currently guaranteed or insured obligation; or

(2) The loan will be made by a lender not of a class specified in 38 U.S.C. 1802(d); or

(3) An obligor liable on the currently outstanding obligation will be released from personal liability.

In any case in which the unpaid balance of the prior loan currently out-

standing is combined or consolidated with the amount of the supplemental loan, the entire aggregate indebtedness shall be repayable in full within the maximum maturity currently prescribed by statute for the original loan. No supplemental loan for the repair, alteration, or improvement of residential property will be eligible for guaranty or insurance unless such repair, alteration, or improvement substantially protects or improves the basic livability or utility of the property involved.

(b) Such loans shall be secured as required in § 36.4351: *Provided*, That a lien of lesser dignity than therein specified will suffice if the lien obtained is immediately junior to the lien of the original guaranteed or insured obligation: *Provided further*, The liens of successive supplemental loans may be of lesser dignity so long as they are immediately junior to the lien of the last previous guaranteed or insured obligation having a lien of required dignity.

(c) Upon providing or extending guaranty or insurance coverage in respect to any such supplemental loan, the rights of the Administrator to the proceeds of the sale of security shall be subordinate to the right of the holder to satisfy therefrom the indebtedness outstanding on the original and supplemental loans.

[13 FR 7742, Dec. 15, 1948, as amended at 19 FR 4003, July 1, 1954; 21 FR 5015, July 6, 1956; 24 FR 2656, Apr. 7, 1959; 40 FR 34594, Aug. 18, 1975]

§ 36.4356 Condominium loans—general.

(a) *Authority—applicability of other loan guaranty regulations, 38 CFR part 36.* A loan to an eligible veteran to purchase a one-family residential unit in a condominium housing development or project shall be eligible for guaranty or insurance to the same extent and on the same terms as other loans under 38 U.S.C. 1810 provided the loan conforms to the provisions of chapter 37, title 38, United States Code, except for sections 1811 (direct loans), and 1827 (structural defects). The loan must also conform to the otherwise applicable provisions of the regulations concerning the guaranty or insurance of loans to veterans. Sec-

tions 36.4353, 36.4355, and 36.4364 shall not be applicable.

(b) *Definitions.* On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired. Wherever used in 38 U.S.C., chapter 37 or the § 36.4300 series of the Code of Federal Regulations, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning herein stated.

(1) *Affiliate of declarant.* Affiliate of declarant means any person or entity which controls, is controlled by, or is under common control with, a declarant.

(i) A person or entity shall be considered to control a declarant if that person or entity is a general partner, officer, director, or employee of the declarant who:

(a) Directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;

(b) Controls in any manner the election of a majority of the directors of the declarant; or

(c) Has contributed more than 20 percent of the capital of the declarant.

(ii) A person or entity shall be considered to be controlled by a declarant if the declarant is a general partner, officer, director, or employee of that person or entity who:

(a) Directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of that person or entity;

(b) Controls in any manner the election of a majority of the directors of that person or entity; or

(c) Has contributed more than 20 percent of the capital of that person or entity.

(2) *Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership where the

buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements (restatement of § 36.4301(hh)).

(3) *Conversion condominium.* Condominium projects not originally built and sold as condominiums but subsequently converted to condominium use.

(4) *Declarant.* Any person who has executed a declaration or an amendment to a declaration to add additional real estate to the project or any successors or assigns of the declarant who offers to sell or sells units in the condominium project and who assumes declarant rights in the project including the right to: add, convert or withdraw real estate from the condominium project; maintain sales offices, management offices and rental units; exercise easements through the common elements for the purpose of making improvements within the condominium; or exercise control of the owner's association. Declarant is further defined as any sponsor of a project or affiliate of the declarant who is acting on behalf of or exercising the rights of the declarant.

(5) *Existing—declarant in control or marketing units.* A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Veterans Administration, but the declarant is in control of the owners' association and/or is currently marketing units for initial transfer to individual unit owners.

(6) *Existing—resale.* A condominium in which all onsite or offsite improvements were completed, or the conversion was completed prior to appraisal by the Veterans Administration, and the declarant is no longer in control of the owners' association and /or marketing units for initial transfer to individual unit owners.

(7) *Expandable condominium.* A project which may be increased in size by the declarant. An expandable condominium is constructed in phases (or stages). After each phase is completed and constituted, the common estates are merged. Each unit owner, thereby,

gains an individual interest in all of the facilities of the common estate.

(8) *Foreclosure.* Foreclosure shall mean the termination of a lien by either judicial or nonjudicial procedures in accordance with local law or the voluntary transfer of property by a deed-in-lieu of foreclosure or similar procedures.

(9) *High rise condominium.* A condominium project which is a multi-story elevator building.

(10) *Horizontal condominium.* A condominium project in which generally no part of a living unit extends over or under another living unit.

(11) *Low rise condominium.* A condominium project in which all or part of a living unit extends over or under another living unit.

(12) *Proposed condominium.* A condominium project that is to be constructed or is under construction. In the case of a condominium conversion, the declarant proposes to convert a building or buildings to the condominium form of ownership, or the declarant is in the process of converting the building or buildings to the condominium form of ownership.

(13) *Series condominium.* A number of adjoining but separately constituted condominiums that are constructed for the purpose of limiting the size of the common estate and number of units. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) *Project approval.* Prior to Veterans Administration guaranty of an individual unit loan in a condominium, the legal documentation establishing the condominium project or development must be approved by the Administrator. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47338, Aug. 13, 1979]

§ 36.4357 Acceptable ownership arrangements and documentation.

(a) *Types of condominium ownership.* The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

(1) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(2) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements. The Administrator will consider for approval, individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners. Any such arrangements must be submitted for prior approval and must not be precluded by applicable State law. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) *Estate of unit owner.* The legal estate of each unit owner must comply with the provisions of § 36.4350. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium. (38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) *Condominium documentation—*
(1) *Compliance with applicable law.* The declaration, bylaws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.

(2) *Recordation.* The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of

plats, plans, or bylaws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the bylaws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.

(3) *Availability.* The owner's association shall be required to make available to unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any unit, current copies of the declaration, bylaws and other rules governing the condominium, and other books, records and financial statements of the owners' association. The owners' association also shall be required to make available to prospective purchasers current copies of the declaration, bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Real property descriptions in the declaration—*
(1) *Clarity—conformity with the law of the jurisdiction.* The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be clearly set forth.

(2) *Developmental plan—proposed condominiums.* The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not

to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right, the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47339, Aug. 13, 1979]

§ 36.4358 Rights and restrictions.

(a) *Declarant's rights and restrictions*—(1) *Disclosure and reasonableness of reserved rights.* Any right reserved by the declarant must be reasonable and set forth in the declaration.

(2) *Examples of reserved rights of declarant, sponsor, or affiliate of declarant which are usually unacceptable.* Binding the owners' association either directly or indirectly to any of the following agreements is not acceptable unless the owner's association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities;

(ii) Any contract or lease, including franchises and licenses, to which a declarant is a party.

The requirements of paragraphs (a)(2) (i) and (ii) of this section do not apply to acceptable ground leases.

(3) *Examples of reserved rights which are usually acceptable.* The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:

(i) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

(ii) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(iii) Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) *Owners' association's rights and restrictions*—(1) *Right of entry upon units and limited common elements.* The owners' association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance as necessary.

(2) *Power to grant rights and restrictions in common elements.* The owners' association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are reasonably necessary to the ongoing development and operation of the project.

(3) *Responsibility for damage to common elements and units.* A provision may be made in the declaration or bylaws for allocation of responsibility for damages resulting from the exercise of any of the above rights.

(4) *Assessments*—(i) *Levy and collection.* The declaration or its equivalent shall describe the authority of the owners' association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, costs and a reasonable attorney's fee shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, costs, and attorney's fee, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or

interest unless assumed by them, or required by applicable law. Common expenses as used in this subdivision shall mean expenditures made or liabilities incurred by or on behalf of the owners' association, together with any assessments for the creation and maintenance of reserves.

(ii) *Reserves and working capital.* There shall be in new or proposed condominium projects (including conversions) a provision for an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a 2 months' estimated common area charge for each unit.

(iii) *Priority of lien.* Any assessment lien must be subordinate to any Veterans Administration guaranteed mortgage except as provided in § 36.4352. A lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due. (38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) *Unit owners' rights and restrictions—*(1) *Obligation to pay expenses.* The declaration or equivalent document shall establish a duty on each unit owner, including the declarant, to pay a proportionate share of common expenses upon being assessed therefor by the owners' association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(2) *Voting rights.* The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for that condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.

(3) *Ingress and egress of unit owners.* There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit.

(4) *Easements for encroachments—units and common elements.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(5) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with § 36.4350(b)(5)(ii).

(6) *Leasing restrictions.* All leases should be in writing and be subject to the declaration and bylaws. Unit owners may be prohibited from leasing their units for an initial term of less than 30 days. No objection will be raised to a requirement that leases

have a minimum initial term of up to 6 months; however, no prohibition related to the term of a lease shall apply to a lease having an initial term exceeding 6 months.

(d) *Rights of action.* The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners' association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47339, Aug. 13, 1979]

§ 36.4359 Miscellaneous legal requirements.

(a) *Declarant transfer of control of owners' association*—(1) *Standards for transfer of control.* The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums.

(2) *Declarant's unit votes after transfer of control.* The requirements of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which declarant owns.

(3) *Unit owners' participation in management.* Declarants should provide for and foster early participation of unit owners in the management of

the project. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(b) *Taxes.* Real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless this limitation is made, a tax lien could amount to more than the value of any particular unit in the structure. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(c) *Information brochure.* When units are being sold by the declarant (not applicable to resales), an information brochure must be given to veteran-buyers prior to the time a downpayment is received and an agreement is signed. Information brochures must be written in simple terms to inform buyers about the condominium regime, and the rights and obligations of unit owners. The information brochure must inform buyers that the association does not provide owner's title insurance and that if such insurance is desired, it is the buyer's responsibility to purchase it. Buyers must also be told that, like any other homeowners, personal liability policies are their responsibility. In the event the development is phased, there must be full disclosure of the impact of the total development plan.

(d) *Policies for bylaws.* The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(e) *Insurance and related requirements*—(1) *Insurance.* The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with § 36.4326. Because of the nature of condominiums, additional types of insurance coverages—such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers managing association affairs, boiler insurance,

etc.—should be considered in appropriate circumstances.

(2) *Fidelity bond coverage.* The securing of appropriate fidelity bond coverage is recommended for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee and be written in an amount equal to at least 150 percent of the estimated annual operating expenses of the condominium project, including reserves.

(3) *Professional management.* Many condominiums are small enough and their common areas so minimal that professional management is not necessary. The Veterans Administration does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable by consent of the association and management. (Management contracts negotiated by the developer should not exceed 1 year.) (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47340, Aug. 13, 1979]

§ 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) *Expandable condominiums.* The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The developer must

build each phase in accordance with an approved plan for the total development supported by detailed plats and plans.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Administrator. Declarant may have the proposed legal documentation reviewed prior to recordation. However, the Administrator's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed.

(4) Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens, and other charges affecting such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant.

(5) The developer must purchase (at developer's own expense) a liability insurance policy in an amount determined by the Administrator to cover any liability to which owners of previously sold units might be exposed. This policy should be endorsed "as owner's interest might appear."

(6) Each expandable project shall have a specified maximum number of units which will give each unit owner a minimum percentage of interest in the common elements. Each project shall also have a specified minimum number of units which will give each unit owner a maximum percentage of interest in the common elements. The minimum number of units to be built should be that which would be adequate to reasonably support the common elements. The maximum

number of units to be built should be that which would not overload the capacity of the common facilities. The maximum possible percentage(s) and the minimum possible percentage(s) of undivided interest in the common elements for each type of unit must be stated in the declaration or equivalent document.

(7) The declaration or equivalent document shall clearly set forth the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in §§ 36.4357(b) and 36.4358(c) (1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period usually will be from 5 to 7 years after the date of recording the declaration.

(b) *Series projects.* (1) Each phase in the series approach is to be considered as a separate project. A separate set of legal documents must be filed for each phase or project that relates to the condominium within its own boundary. The declaration for each phase must describe the particular project as a part of the whole development area, but subject only the one phase to the condominium regime. A separate unit ratio must be established that would relate each unit to all units of the particular condominium for purposes of ownership in the common areas, voting rights and assessment liability. A separate association may be created to govern the affairs of each condominium. Each phase is subject to a separate presale requirement.

(2) In the case of proposed projects, or projects under construction, the declaration should state the number of total units that the developer intends to build on other sections of the development area.

(c) *Other flexible condominiums.* Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or

both, may be created) will be considered on an individual case basis. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Ownership and operation of off-site facilities—*(1) *Title requirements.* Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners has been completed and conveyed by the developer to a nonprofit corporation approved by the Administrator with title insured by an owner's title policy or other acceptable title evidence showing title in the nonprofit corporation free of encumbrances.

(2) *Mandatory membership.* The declaration of the condominium (each condominium in a series development) and the articles of incorporation of the nonprofit corporation which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility nonprofit corporation and that upon the sale of the unit, membership is automatically transferred to the new owner/purchaser. If membership in an offsite owners' association is voluntary, no credit in the CRV (certificate of reasonable value) valuation may be given for such offsite amenities.

(ii) Each member of the nonprofit corporation must have a representative vote at meetings of the corporation.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the nonprofit corporation as assessed by the corporation for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be equitably determined. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium.

(3) *Developer payment of offsite facility expenses in a series project.* Until the developer has completed all of the intended condominium phases in a total condominium development and established each condominium regime by filing a separate declaration, ap-

proved by the Veterans Administration for each project, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the developer commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the developer. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the nonprofit corporation under local law.

(4) *Board of directors, first meeting.* Until the first annual meeting, the nonprofit corporation may be governed by an interim board composed of developer representatives. The annual meeting of the nonprofit corporation should take place within 1 year after the first condominium unit is conveyed. At the first annual meeting the board of directors will be elected by owners of the condominium units. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47341, Aug. 13, 1979]

§ 36.4360a Appraisal requirements.

(a) *Existing resale condominiums.* Upon acceptance by the local office of the organizational documents, the project and unit(s) proposed as security for guaranteed financing shall be appraised to ensure that they meet MPR's (Minimum Property Requirements) and are safe, sanitary, and structurally sound. The Veterans Administration MPR's for existing construction apply to all existing resale condominiums including conversions, except that water, heating, ventilating, air conditioning and sewer service may be supplied from a central source. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6), (b)(5))

(b) *Proposed condominiums or existing condominiums with declarant in control or marketing units—(1) Low rise and high rise condominiums.* Low rise and high rise condominiums including conversions shall comply with local building codes. In those areas where local standards are nonexistent,

inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area.

(2) *Horizontal condominiums.* The MPS (Minimum Property Standards) for One and Two Family Dwellings, HUD (Department of Housing and Urban Development) 4900.1, as identified in § 200.929 (a) and (b)(1) of Title 24 of the CFR are hereby incorporated by reference into this section.

(i) Proposed horizontal condominiums (excluding conversions) must be constructed according to HUD 4900.1, with the exception of the last sentence of paragraph 202-2, "Individual utilities serving a living unit shall not pass over, under or through another living unit", which shall not apply. Furthermore, references made therein to submission of applications for variations to the Department of Housing and Urban Development, are also not applicable. Requests for variations in projects subject to Veterans Administration approval shall be directed to Veterans Administration field installations. Amendments to HUD 4900.1 are published in the FEDERAL REGISTER. (See 24 CFR 200.933.) A current copy of HUD 4900.1 is available for public inspection in accordance with § 200.931 of title 24 of the Code of Federal Regulations. HUD 4900.1 shall also be available for public inspection at Veterans Administration field installations. Veterans Administration policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums.

(ii) Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with local building codes. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications

conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area.

(3) *Additional condominium conversion requirements.* (i) The declarant of a condominium project, which is (a) proposed, (b) under construction, or (c) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement also must give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects where the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of off-site utilities servicing the site (e.g., sanitary or water) is required.

(c) *Presale requirements*—(1) *Proposed construction or existing declarant in control.* Bona fide agreements of sale must have been executed by purchasers (who are contractually obligated to complete the purchase and who intend to occupy the property as their principal place of residence) of 70 percent of the total number of units in the project. Lenders shall certify as to satisfaction of the presale requirement prior to Veterans Administration guaranty of the first unit loan. Multiple purchases of condominium units by one owner are to be counted as one sale when computing the number of sales within a condominium

regime to determine if this requirement has been met. When a declarant can demonstrate that a lower percentage would be justified, the Administrator, on an individual case basis, may approve a presale requirement of less than 70 percent. Reduction of the 70 percent presale requirement will be considered when:

(i) Strong initial sales demonstrate a ready market, or

(ii) The declarant will provide cash assets or acceptable bonds for payment of full common area assessments to the owners' association until such assessments are assumed by unit purchasers, or

(iii) Subsequent phases of an overall development are being undertaken in a proven market area, or

(iv) Previous experience in similar projects in the same market area indicates strong market acceptance, or

(v) The development is in a market area that has repeatedly indicated acceptance of such projects.

(2) *Multiphase—proposed or existing declarant in control.* The requirements of paragraph (c)(1) of this section shall apply to each individual phase of a multiphase development, taking into consideration that each individual phase must be capable of self-support in the event that the developer does not complete all planned phases.

(3) *Existing—resales.* An occupancy level based on owner residency of 70 percent of the total units will apply. The Administrator may consider a lesser occupancy percentage on a case-by-case basis. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Warranty.* Except in condominium conversion projects, each Certificate of Reasonable Value issued by the Administrator relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements, in the form prescribed by the Administrator. The unit shall be warranted for 1 year from the

date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 1 year from such time as units to which 60 percent of the votes in the unit owners' association appertain have been transferred to unit owner other than the warrantor. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[44 FR 47342, Aug. 13, 1979]

§ 36.4361 Right of the Administrator to refuse to appraise residential properties.

(a) The Administrator may refuse to appraise dwellings to which a request for appraisal relates if the Administrator determines that any party or parties involved or financially interested in the construction or sale of such units (1), have theretofore participated in the construction or sale of units sold to veterans which involved (i) substantial deficiencies in the construction, or (ii) a failure or indicated inability to discharge contractual obligations to the veterans who contracted for the construction or purchase of such units, or (iii) the use of a contract of sale or of methods or practices in marketing such units of a type which under standards promulgated by the Administrator was unfair or unduly prejudicial to the veterans concerned, or (2), have been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development, or (3), have declined to sell a residential property to an eligible veteran because of race, color, religion, sex, or national origin. Upon any such refusal to appraise, the Administrator shall give written notice thereof to the person or firm submitting the appraisal request

and shall state the basis for such refusal.

(b) Except when the refusal to appraise is based upon action taken by the Secretary of Housing and Urban Development, any person or persons affected by such refusal to appraise shall have the right within 10 days after receipt of written notice of such refusal to file with the Administrator, by registered mail, a request for a hearing. Upon receipt of such request, the Chief Benefits Director shall, as promptly as may be deemed feasible to do so, designate a time and place as may be deemed appropriate for such hearing and shall appoint one or more persons who shall constitute a board to conduct the hearing. The person or persons requesting such hearing shall be afforded full opportunity to appear at the hearing in person, or by counsel, or both, and to introduce evidence showing why the sanction should be terminated or modified. Authority is hereby granted to the persons designated to conduct the hearing to administer oaths to witnesses.

(c) As soon as is practicable after conclusion of the hearing, the board will make findings of fact and recommendations in writing to the Chief Benefits Director. The builder or other person requesting the hearing will be furnished with a transcript of the hearing and with a statement of the board's findings of fact. Such builder or other person shall have the right within 14 days after receipt of such copy to file with the Chief Benefits Director a brief of either, or both, facts and law.

(d) Upon receipt of the findings and recommendations of the hearing board and the brief of the builder or other person requesting the hearing, if a brief is filed, the Chief Benefits Director shall make a determination in the case; i.e., whether the refusal to appraise as originally imposed is continued, modified, or terminated, and what terms or conditions, if any, are imposed for termination or modification of the refusal to appraise. Notice of such determination shall be given to the person requesting the hearing. Such person shall have the right to appeal such decision to the Administrator within 30 days after the date of

receipt of such notice. In the event of an appeal, the Administrator will decide the matter finally and will notify the person who filed the appeal of the decision.

(e) Where the refusal to appraise is based solely on action taken by the Secretary of Housing and Urban Development the sanction will be lifted upon presentation to the Veterans Administration by the builder concerned of satisfactory evidence of his or her reinstatement as a participant in the programs administered by the Federal Housing Administration.

[17 FR 9668, Oct. 25, 1952, as amended at 20 FR 769, Feb. 4, 1955; 20 FR 9180, Dec. 10, 1955; 23 FR 8297, Oct. 28, 1958; 24 FR 5371, July 2, 1959; 40 FR 34594, Aug. 18, 1975]

§ 36.4362 Requirement of construction warranty.

Each certificate of reasonable value issued by the Administrator relating to a proposed or newly constructed dwelling unit, except those covering one-family residential units in condominium housing developments or projects within the purview of §§ 36.4356 through 36.4360a, shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a guaranteed or insured loan a warranty, in the form prescribed by the Administrator, that the property has been completed in substantial conformity with the plans and specifications upon which the Administrator based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Administrator, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

[40 FR 34595, Aug. 18, 1975, as amended at 44 FR 47343, Aug. 13, 1979]

§ 36.4363 Nondiscrimination and equal opportunity in housing certification requirements.

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any re-

quest for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a certification from the builder, sponsor or other seller, in the form prescribed by the Administrator, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.

(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:

(1) The veteran owns the lot; or

(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.

(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Administrator, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Veterans Administration prior to receipt of such certification.

(d) No commitment shall be issued and no loan shall be guaranteed or insured under 38 U.S.C. Chapter 37 unless the veteran certifies, in such form as the Administrator shall prescribe, that

(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin.

(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or

national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

[28 FR 7673, July 27, 1963, as amended at 36 FR 13032, July 13, 1971; 40 FR 34595, Aug. 18, 1975]

§ 36.4364 Correction of structural defects.

(a) The purpose of this section is to specify the types of assistance that the Administrator may render pursuant to 38 U.S.C. 1827 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions under which such assistance will be rendered.

(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Veterans Administration office having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Administrator. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was made, guaranteed or insured subsequent to the first such loan shall be entitled to file an application if it is filed within 4 years of the date on which such first loan was made, guaranteed or insured by the Administrator.

(c) An applicant for assistance under this section must establish that:

(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Veterans Administration or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which

was made, guaranteed or insured on or after May 8, 1968. The Administrator may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Administrator determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling a structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Administrator determines that assistance under this section is appropriate and necessary the Administrator may take any of the following actions:

(1) Pay such amount as is reasonably necessary to correct the defect, or

(2) Pay the claim of the borrower for reimbursement of the borrower's expenses for correcting or obtaining correction of the defect, or

(3) Acquire title to the property upon terms acceptable to the borrower and the holder of the guaranteed or insured loan.

(e) To the extent of any expenditure made by the Administrator pursuant to paragraph (d) of this section the Administrator shall be subrogated to any legal rights the borrower or applicant described in paragraph (c)(2) of this section may have against the builder, seller, or other persons arising out of the structural defect or defects.

(f) The borrower shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this section. Any determination made by the Administrator in connection with a borrower's application for assistance shall be final and conclusive and shall not be subject to judicial or other review. Authority to act for the Administrator under this section is delegated to the Chief Benefits Director.

(g) For the purpose of this section, the term "structural defects seriously

affecting livability" shall in no event be deemed to include (1) defects of any nature in a dwelling in respect to which the applicant for assistance under this section was the builder or general contractor, or (2) structural features, improvements, amenities, or equipment which were not taken into account in the Administrator's determination of reasonable value.

[33 FR 16088, Nov. 1, 1968, as amended at 36 FR 321, Jan. 9, 1971; 40 FR 34595, Aug. 18, 1975]

LOANS UNDER 38 U.S.C. 1815

SOURCE: Secs. 36.4370 to 36.4375 appear at 13 FR 7281, Nov. 27, 1948, unless otherwise noted.

§ 36.4370 Insured loan and insurance account.

(a) Loans otherwise eligible may be insured when purchased by a lender eligible under 38 U.S.C. 1815 if the purchaser (lender) submits with the loan report evidence of an agreement, general or special, made prior to the closing of the loan, to purchase such loan subject to its being insured.

(b) A current account shall be maintained in the name of each insured lender or purchaser. The account shall be credited with the appropriate amounts available for the payment of losses on insured loans made or purchased. The account shall be debited with appropriate amounts on account of transfers, purchases under § 36.4318, or payment of losses. The Administrator may on 6 months' notice close any lender's insurance account. Such account after expiration of the 6-month period shall be available only as to loans embraced therein.

(c) Amounts received or recovered by the Administrator or the holder with respect to a loan after payment of an insured claim thereon will not restore any amount to the holder's insurance account.

[13 FR 7281, Nov. 27, 1948, as amended at 24 FR 2657, Apr. 7, 1959]

§ 36.4372 Transfer of insured loans.

(a) In cases involving the transfer from one insured financial institution to another insured institution of loans which are transferred without re-

course, guaranty, or repurchase agreement, if no payment on any loan included in the transfer is past due more than one calendar month at the time of transfer there shall be transferred from the insurance account of the transferor to the insurance account of the transferee an amount equal to the original percentage credited to the insurance account in respect to each loan being transferred applied to the unpaid balance of such loans, or to the purchase price, whichever is the lesser.

(b) Transfers between insurance accounts in a manner or under conditions not provided in paragraph (a) of this section must have the prior approval of the Administrator.

(c) Where loans are transferred with recourse or under a guaranty or repurchase agreement no insurance credit will be transferred or insurance account affected and no reports will be required.

(d) In all cases of transfer of loans from one insured financial institution to another insured institution, except as provided in paragraph (c) of this section, a report on a prescribed form executed by the parties and showing their agreement with regard to the transfer of insurance credits shall be made to the Administrator.

§ 36.4373 Debits and credits to insurance account under § 36.4318.

In the event that an insured loan is transferred under the provisions of § 36.4318, there shall be charged to the insurance account of the transferor a sum equal to the amount paid transferor on account of the indebtedness less the current market value of the property transferred as security therefor as determined by an appraiser designated by the Administrator, or the amount chargeable to such insurance account in the event of a transfer under § 36.4372, whichever sum is the greater. The credit to the insurance account of the transferee will be computed in accordance with § 36.4372(a).

§ 36.4374 Payment of insurance.

(a) Upon the continuance of a default for the period specified in § 36.4316, the holder may proceed to establish the net loss, after giving the

noti prescribed in § 36.4317 if security is available. The net loss shall be reported to the Administrator with proper claim, whereupon the holder shall be entitled to payment of the claim within the amount then available for such payment under the payee's related insurance account. Subject to the provisions of the paragraph (b) of this section and to § 36.4370(b) a supplemental claim for any balance of an insurance loss may be filed at any time within 5 years after the date of the original claim.

(b) The basis of the claim for an insured loss shall consist in the unrealized principal or the amount paid for the obligation, if less, plus unrealized interest to the date of claim or the date of sale whichever is earlier, and those expenses, if any, allowable under § 36.4313, but subject to proper credits because of payments, set-off, proceeds of security or otherwise, provided that if there is no liquidation of security the claim shall not include an accrual of interest for a period in excess of 6 months from the date of the first uncured default.

[13 FR 7742, Dec. 15, 1948]

§ 36.4375 Reports of insured institutions.

An insured financial institution shall make such reports respecting its insurance accounts as the Administrator may from time to time require, not more frequently than semiannually.

FEDERALLY ASSISTED CONSTRUCTION CONTRACTS—NONDISCRIMINATION IN EMPLOYMENT—EXECUTIVE ORDERS 11246 AND 11375

AUTHORITY: 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4390 Purpose.

Sections 36.4390 through 36.4393 are promulgated to achieve the aims of the applicable provisions of Executive Orders 11246 and 11375 and the regulations of the Secretary of Labor with respect to federally assisted construction contracts.

[40 FR 34595, Aug. 18, 1975]

§ 36.4391 Applicability.

(a) For the purposes of the home loan guaranty and insurance and direct loan programs of the Veterans

Administration, the term "applicant for Federal assistance" or "applicant" in Part III of Executive Order 11246, shall mean the builder, sponsor or developer of land to be improved by such builder, sponsor or developer for the purpose of constructing housing thereon for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37, or the builder, sponsor or developer of housing to be constructed for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37.

(b) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are applicable to:

(1) Each Master Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963;

(2) Each individual Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963, except as provided in paragraph (c)(2) of this section;

(3) Each Special Conditions Letter or modification thereof issued on or after July 22, 1963, in respect to site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon;

(4) Each direct loan fund reservation commitment or extension thereof issued to builders on or after July 22, 1963;

(c) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are not applicable to:

(1) Grants under chapter 21, title 38, U.S.C.;

(2) Individual Certificates of Reasonable Value issued on or after July 22, 1963, if:

(i) The certificate relates to existing properties, either previously occupied or unoccupied; or

(ii) The certificate relates to proposed construction and

(a) A veteran was named in the request for appraisal, or

(b) A veteran contracted for the construction or purchase of the home prior to issuance of the certificate, or

(c) The property was listed in the Schedule of Reasonable Values on an outstanding Master Certificate of Reasonable Value issued prior to July 22, 1963;

(3) Any contract or subcontract for construction work not exceeding \$10,000;

(4) Any other contract or subcontract which is exempted or excepted by the regulations of the Secretary of Labor.

[29 FR 2862, Feb. 29, 1964, as amended at 31 FR 8745, June 24, 1966; 40 FR 34595, Aug. 18, 1975]

§ 36.4392 Certification requirements.

In any case in which §§ 36.4390 through 36.4393 are applicable, as set forth in § 36.4391, no action will be taken by the Veterans' Administration on any request for appraisal relating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commitment unless the builder, sponsor or developer has furnished the Veterans' Administration a signed certification in form as follows:

To induce the Veterans' Administration to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Veterans' Administration, or for establishment by the Veterans' Administration of reasonable value relating to proposed construction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing included in its request to the Veterans' Administration the following equal opportunity clause:

During the performance of this contract the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are

treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to

section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the equal opportunity clause.

The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The undersigned agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The undersigned further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon the contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246.

In addition, the undersigned agrees that if it fails or refuses to comply with these undertakings such failure or refusal shall be a proper basis for cancellation by the Veterans Administration of any outstanding master certificates of reasonable value or individual certificates of reasonable value relating to proposed construction, except in respect to cases in which an eligible veteran

has contracted to purchase a property included on such certificates, and for the rejection of future requests submitted by the undersigned or on his or her behalf for site approval, appraisal services, and direct loan fund reservation commitments until satisfactory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

[31 FR 8745, June 24, 1966, as amended at 40 FR 34596, Aug. 18, 1975]

§ 36.4393 Complaint and hearing procedure.

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or entity has violated the undertakings referred to in § 36.4392, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Director of the Veterans Administration regional office or center.

(b) If the existence of a violation is denied by the person, firm or other entity against which a complaint has been made, the Director or designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not violated the undertakings referred to in § 36.4392, the parties shall be so notified.

(d) If it is found that there has been a violation of the undertakings referred to in § 36.4392, the person, firm or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimination of the violation. If the violation is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will comply with the undertakings pursuant to § 36.4392 in the future, the parties concerned shall be so notified.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246 as amended and the regulations of the Secretary of Labor.

(g) Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed may apply to the Chief Benefits Director for a review of the action taken by a Director. Upon receiving such application, the Chief Benefits Director may designate a representative or representatives to conduct an informal hearing and to make a report of findings. The Chief Benefits Director may, after a review of such report, modify or reverse an action taken by a Director.

(h) Reinstatement of restricted persons, firms or other entities shall be within the discretion of the Chief Benefits Director and under such terms as the Chief Benefits Director may prescribe.

[29 FR 2862, Feb. 29, 1964, as amended at 40 FR 34596, Aug. 18, 1975]

ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING SPECIALLY ADAPTED HOUSING

AUTHORITY: Sections 36.4400 to 36.4410 issued under 72 Stat. 1114, 1168, as amended (38 U.S.C. 210, 801).

NOTE: Those requirements, conditions, or limitations expressly set forth in 38 U.S.C. chapter 21 and not restated herein must be taken into consideration in conjunction with the regulations in §§ 36.4401 to 36.4410.

[24 FR 2657, Apr. 7, 1959]

§ 36.4400 Applicability.

References in the regulations pertaining to assistance to certain disabled veterans in acquiring specially adapted housing to 38 U.S.C. chapters 21 and 37, shall where applicable, be deemed to refer also to the prior corresponding provision of the law.

[24 FR 2657, Apr. 7, 1959]

§ 36.4401 Definitions.

Wherever used in 38 U.S.C. chapter 21 or §§ 36.4401 through 36.4410,

unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated; namely:

(a) "Administrator": The Administrator of Veterans Affairs or any employee of the Veterans Administration authorized to act in the Administrator's stead.

(b) "Chapter 21": chapter 21 of title 38, U.S.C.

(c) "Movable facilities": Such exercising equipment and other aids as may be allowed or required by the Chief Medical Director of designee.

(d) "Necessary land": Any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality.

(e) *Special fixtures and necessary adaptations.* Construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.

(f) "Housing unit": A family dwelling or unit approved by the Department of Medicine and Surgery as medically feasible for occupancy as a home by the individual beneficiary, including the land, improvements, and all appurtenances, together with such movable facilities or special features as are authorized under the definitions of those terms in §§ 36.4401 through 36.4410.

(g) "Remodeling": Any alterations, repairs, or improvements necessary or desirable to the housing unit, as defined in §§ 36.4401 through 36.4410.

(h) *Veteran's family.* Persons related by blood, marriage, or adoption. (38 U.S.C. 801(b))

[24 FR 2657, Apr. 7, 1959, as amended at 46 FR 43673, Aug. 31, 1981]

§ 36.4402 Eligibility.

(a) *Eligibility, housing grants.* No beneficiary shall be eligible for assistance under section 801(a) of chapter 21 for the purpose of reimbursing the veteran for the cost of an existing structure acquired by the veteran prior to applying for assistance or for constructing or remodeling a dwelling

or for otherwise acquiring a suitable housing unit, unless it is determined pursuant to §§ 36.4401 through 36.4410 that:

(1) It is medically feasible for such beneficiary to reside in the existing or proposed housing unit and in the locality where such is or will be situated;

(2) The nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes;

(3) Such unit bears a proper relation to the veteran's present and anticipated income and expenses;

(4) The veteran has or will acquire an interest in the housing unit which is—

(i) A fee simple estate, or

(ii) A leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, or

(iii) An interest in a residential unit in a cooperative or a condominium type development which in the judgment of the Chief Benefits Director or the Director, Loan Guaranty Service, provides a right of occupancy for a period of not less than 50 years;

Provided, The title to such estate or interest is or shall be such as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community;

(5) The veteran has certified, in such form as the Administrator shall prescribe, that

(i) Neither the veteran, nor anyone authorized to act for the veteran, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property acquired by this benefit to any person because of race, color, religion, sex, or national origin;

(ii) The veteran recognizes that any restrictive covenant on the property relating to race, color, religion, sex, or national origin is illegal and void and any such covenant is specifically disclaimed;

(iii) The veteran understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any

person responsible for a violation of the applicable law; and

(6) The housing unit, if located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Program, is or will be covered by flood insurance for the lesser of the full insurable value of the property or the maximum flood insurance available under the National Flood Insurance Program.

(b) *Eligibility, adaptations grants.* No beneficiary shall be eligible for assistance under section 801(b) of chapter 21, for the cost of reasonably necessary adaptations to an existing structure or for the inclusion of such adaptations in proposed construction unless it is determined pursuant to §§ 36.4401 through 36.4410 that:

(1) The veteran has not been declared eligible for assistance under section 801(a) of chapter 21;

(2) The veteran has not been provided the particular type of adaptation, improvement, or structural alteration under section 612(a) of title 38, United States Code;

(3) The veteran is or will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family;

(4) The adaptations are reasonably necessary because of the veteran's disability; and

(5) If the veteran is the owner or part-owner of the housing unit, the veteran must comply with paragraph (a) (5) and (6) of this section. (38 U.S.C. 801(b), 804)

[46 FR 43673, Aug. 31, 1981]

§ 36.4403 Joint ownership of housing unit.

The construction or remodeling of a housing unit, or reimbursement to a veteran who has acquired a suitable unit at the veteran's own expense pursuant to section 801(a) of chapter 21, shall be permissible notwithstanding that title to the home is or will be vested in an eligible veteran and spouse. If an undivided interest is or will be owned by a person other than

the spouse of the veteran the cost of the unit to the veteran shall be computed to be such part of the total cost of the unit as is proportionate to the undivided interest of the veteran in the entire property, and the percentages and amounts prescribed in section 801(a) of chapter 21 shall be calculated only upon such cost to the veteran.

[46 FR 43674, Aug. 31, 1981]

§ 36.4404 Computation of cost.

(a) *Computation of cost of housing unit.* Under section 801(a) of chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, there may be included in the total cost to the veteran the following:

(1) The cost of the necessary land and the grading, landscaping, and improvement thereof for use for residential purposes.

(2) The cost of the improvement erected thereon and the appurtenances thereto, including such heating, cooking, laundry, and refrigeration equipment as may be suitable to equip a housing unit for residential use.

(3) The cost of remodeling a housing unit.

(4) The cost of movable facilities and special fixtures.

(5) Reasonable architects' and attorneys' fees for services rendered to the veteran which are necessary to and are in connection with the transaction.

(6) Any charges for the customary necessary connections to or extensions of public facilities and improvements.

(7) Such other reasonable costs or expenses incurred in closing a loan or financing the acquisition of the housing and land, including unpaid taxes, ground rents, or assessments, which are normally required to be paid by a lienor or a purchaser.

(b) *Computation of cost of adaptations.* Under section 801(b) of chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, the assistance is limited to the lesser of:

(1) The actual cost of the adaptations, including installation costs, determined to be reasonably necessary, or

(2) \$5,000. (38 U.S.C. 802(b))

[46 FR 43674, Aug. 31, 1981]

§ 36.4405 Submission of proof to the Administrator.

As a condition precedent to the grant the Administrator may require submission of such proof of costs and other matters as the Administrator may deem necessary.

[13 FR 7282, Nov. 27, 1948, as amended at 46 FR 43674, Aug. 31, 1981]

§ 36.4406 Disbursement of benefit authorized.

After approval of an application for a grant, the Administrator shall decide upon a method of disbursement which in the Administrator's opinion is appropriate and advisable in the interest of the veteran and the Government and disburse the benefit payable accordingly. Disbursements may be made to the veteran or to third parties who have contracted with the veteran, or to an escrow agent under conditions imposed by the Administrator.

[14 FR 5780, Sept. 22, 1949, as amended at 46 FR 43674, Aug. 31, 1981]

§ 36.4407 Supplementary administrative action.

Notwithstanding any requirement, condition, or limitation stated in or imposed by §§ 36.4401 through 36.4410, the Administrator, within the limitations and conditions prescribed in 38 U.S.C. chapters 3 and 21, may take such action as may be necessary or appropriate to relieve undue prejudice to a veteran or a third party contracting or dealing with such veteran which might otherwise result.

[24 FR 2657, Apr. 7, 1959]

§ 36.4408 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Veterans' Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to assisting eligible veterans to acquire specially adapted housing.

(b) Designated positions:

Chief Benefits Director.
Director, Loan Guaranty Service.
Assistant Director for Construction and Valuation.
Chief, Specially Adapted Housing Unit, Loan Guaranty Service.
Director, Medical and Regional Office Center.
Director, VA Regional Office and Insurance Center.
Director, VA Regional Office.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.

(c) Nothing in this section shall be construed to authorize any employee designated in paragraph (b) of this section to determine basic eligibility or medical feasibility, except as otherwise authorized.

[13 FR 7282, Nov. 27, 1948, as amended at 19 FR 3225, June 2, 1954; 46 FR 43674, Aug. 31, 1981]

§ 36.4409 Guaranteed or insured loans under 38 U.S.C. chapter 37.

In any case where, in addition to the benefits of Chapter 21, the veteran will utilize the veteran's entitlement to the loan guaranty or insurance benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations promulgated thereunder excepting § 36.4306 thereof.

[24 FR 2657, Apr. 7, 1959, as amended at 46 FR 43674, Aug. 31, 1981]

§ 36.4410 Allocation of the funds of the grant.

Any amount payable as a grant under section 801(a), chapter 21 may be required by the Administrator to be utilized as the Administrator deems advisable for payment of any of the following costs or debts which are obligations of the veteran before any part of the grant may be paid to the veteran directly:

- (a) Cost of necessary land,
- (b) Cost of constructing, adapting, or remodeling a housing unit.
- (c) Delinquent taxes secured by a lien on the housing unit,
- (d) Reduction or retirement of any indebtedness incurred in connection with the purchase, construction, or remodeling of a housing unit on which the grant is made.

[13 FR 7283, Nov. 27, 1948, as amended at 46 FR 43674, Aug. 31, 1981]

DIRECT LOANS

AUTHORITY: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. chapter 37 are not restated herein and must be taken into consideration in the interpretation or application of the regulations concerning direct loans to veterans.

[24 FR 2658, Apr. 7, 1959]

§ 36.4500 Applicability.

(a) The regulations concerning direct loans to veterans shall be applicable to loans made by Veterans Administration pursuant to 38 U.S.C. 1811.

(b) Title 38, U.S.C. chapter 37 is a continuation and restatement of the provisions of title III of the Servicemen's Readjustment Act of 1944, and may be considered to be an amendment to such title III. References in the regulations concerning direct loans to veterans to the sections or chapters of title 38, United States Code, shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

[24 FR 2658, Apr. 7, 1959]

§ 36.4501 Definitions.

Wherever used in 38 U.S.C. 1811 or the regulations concerning direct loans to veterans, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Administrator" means the Administrator of Veterans Affairs, or any employee of the Veterans Administration authorized to act in the Administrator's stead.

(b) "Cost" means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

(c) "Default" means failure of a borrower to comply with the terms of a loan agreement.

(d) "Dwelling" means a building designed primarily for use as a home, consisting of one residential unit only and not containing any business unit.

(e) "Farm residence" means a dwelling located on a farm which is to be occupied by the veteran as the veteran's home.

(f) "Guaranty" means the obligation of the United States, incurred pursuant to 38 U.S.C. chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

(g) "Home" means a place of residence.

(h) "Improvement" means any addition or alteration which enhances the utility of the property for residential purposes.

(i) "Indebtedness" means the unpaid principal and interest plus any other sums a borrower is obligated to pay Veterans Administration under the terms of the loan instruments or of the regulations concerning direct loans to veterans.

(j) "Loan" means a loan made to a veteran by Veterans Administration pursuant to the provisions of 38 U.S.C. 1811 and the regulations concerning direct loans to veterans.

(k) "Purchase price" means the entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied thereto.

(l) "Reasonable value" means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as proper price or cost in the light of prevailing conditions.

(m) "Repairs" means any alteration of existing realty which is necessary or advisable for protective, safety, or restorative purposes.

(n) "Veterans Administration" means the Administrator of Veterans' Affairs, or any employee of the Veterans Administration authorized to act in the Administrator's stead.

(o) "A period of more than 180 days": For the purposes of sections 1807 and 1818 of title 38, United States Code, the term "a period of more than 180 days" shall mean 181 or more calendar days of continuous active duty.

(p) "Energy conservation improvement." An improvement to an existing dwelling or farm residence through

the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 1810(d) or by the Administrator. (38 U.S.C. 1810(a)(7))

[24 FR 2658, Apr. 7, 1959, as amended at 31 FR 16713, Dec. 30, 1966; 35 FR 17180, Nov. 7, 1970; 40 FR 4143, Jan. 28, 1975; 41 FR 32218, Aug. 2, 1976; 41 FR 44859, Oct. 13, 1976; 45 FR 20472, Mar. 28, 1980; 46 FR 43674, Aug. 31, 1981]

§ 36.4502 Use of guaranty entitlement.

The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after October 1, 1980, shall be charged with an amount which bears the same ratio to \$27,500 as the amount of the loan bears to \$33,000. The charge against the entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date. (38 U.S.C. 1811(d)(2)(A))

[46 FR 43675, Aug. 31, 1981]

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 15½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 16 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

(b) Each loan shall be repayable on the basis of approximately equal monthly installments; except that in

the case of loans made for any of the purposes described in clause (2), (3), or (4) of subsection (a) of 38 U.S.C. 1810, such loans may provide for repayment in quarterly, semiannual, or annual installments, provided that such plan of repayment corresponds to the present and anticipated income of the veteran.

(c) The first installment payment on a loan to construct, alter or improve a farm residence or other dwelling may be postponed for a period not exceeding 12 months from the date of the loan instruments. The first installment payment for a loan for the purchase of a dwelling or farm on which there is a farm residence may not be postponed more than 60 days from the date of loan closing: *Provided*, That if the loan is repayable in quarterly, semi-annual or annual installments, the first installment payment date may be postponed for not more than 12 months from the date of the loan instruments.

(d) The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan the final installment may be for an amount not in excess of 5 percent of the original principal amount of the loan. The limitations imposed by this paragraph on the amount of the final installment shall not apply in the case of any loan extended or recast pursuant to § 36.4505 or 36.4506.

(38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1819(f) and (g))

[15 FR 6288, Sept. 20, 1950, as amended at 24 FR 2658, Apr. 7, 1959; 47 FR 9827, Mar. 8, 1982]

§ 36.4504 Loan closing expenses.

(a) Veterans Administration will designate a loan closer to represent the Veterans Administration at the closing and in advance thereof will agree with the loan closer upon the fee to be paid by the Veterans Administration for preparing the loan closing instruments and attending at the closing of the loan. The loan closer as such is neither an agent nor employee of the Veterans' Administration.

(b) With respect to a loan made to a veteran-borrower pursuant to an application (VA Form 26-6921) received by the Veterans Administration on or

after March 3, 1966, the borrower shall pay the Veterans Administration the following:

(1) \$50, or one percent (1%) of the loan amount, whichever is greater, which charge shall be in lieu of the loan closer's fee, credit report, and cost of appraisal: *Provided*, That if the loan is to finance the cost of construction, repairs, alterations, or improvements necessitating disbursements of the loan proceeds as the construction or other work progresses, the charge to the veteran-borrower shall be two percent (2%) of the loan amount, but not less than \$50 in any event.

(2) Costs or expenses normally paid by a purchaser or lienor incident to loan closing including but not limited to the following:

(i) Fee of Veterans Administration designated compliance inspector.

(ii) Recording fees and recording taxes or other charges incident to recordation.

(iii) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and the initial deposit (lump-sum payment) for the tax and insurance account.

(iv) Hazard insurance as required by § 36.4512.

(v) Survey, if any.

(vi) Title examination and title evidence.

Charges or costs payable by the veteran-borrower shall be paid in cash and may not be paid out of the proceeds of the loan. No service or brokerage fee shall be charged against the veteran-borrower by any third party for procuring a direct loan or in connection therewith.

(c) With respect to a loan to construct, repair, alter, or improve a farm residence or other dwelling, Veterans Administration may require the veteran to deposit with Veterans Administration, or in an escrow satisfactory to Veterans Administration, 10 percent of the estimated cost thereof or such alternative sum, in cash or its equivalent, as Veterans Administration may determine to be necessary in order to afford adequate assurance that sufficient funds will be available, from the proceeds of the loan or from other

sources, to assure completion of the construction, repair, alteration, or improvement in accordance with the plans and specifications upon which Veterans Administration based its loan commitment.

[15 FR 6288, Sept. 20, 1950, as amended at 23 FR 2339, Apr. 10, 1958; 33 FR 6976, May 9, 1968; 35 FR 17180, Nov. 7, 1970; 41 FR 32218, Aug. 2, 1976]

§ 36.4505 Maturity of loan.

(a) The maturity of a loan shall not exceed 25 years and 32 days. If the Veterans Administration determines the income and expenses of a veteran-applicant under customary credit standards would prevent the veteran from making the required loan payments for a loan which matures in 25 years and 32 days, but the veteran would be able to make the loan payments over a longer period of time, the loan may be made with a maturity not in excess of 30 years and 32 days.

(b) Every loan shall be repayable within the estimated economic life of the property securing the loan.

(c) Nothing in this section shall preclude extension of the loan pursuant to the provisions of § 36.4506. (38 U.S.C. 1803(c)(1), (d)(1))

[46 FR 43675, Aug. 31, 1981]

§ 36.4506 Recasting.

In the event of default or to avoid imminent default, the Veterans Administration may at any time enter into an agreement with the borrower which will permit the latter temporarily to repay the obligation on a basis appropriate to the borrower's apparent current ability to pay or may enter into an appropriate recasting or extension agreement: *Provided*, That no such agreement shall extend the ultimate repayment of a loan beyond the expiration of 30 years and 32 days from the date of the loan. *Provided further*, That nothing in this section shall be deemed to limit the forbearance or indulgence which the Administrator may extend in an individual case pursuant to the provisions of 38 U.S.C. 1820(f).

[46 FR 43675, Aug. 31, 1981]

§ 36.4507 Refinancing of mortgage or other lien indebtedness.

(a) Loans may be made for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as the veteran's home, provided that:

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence, and

(2) The loan is otherwise eligible.

(b) A refinancing loan for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess proceeds to be paid to the veteran) may also be made, provided that—

(1) The loan is otherwise eligible, and

(2) The issuance of a commitment to make any such loan for an amount which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Chief Benefits Director otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing shall preclude making a loan pursuant to the provisions of 38 U.S.C. 1810(a)(5) to an eligible veteran having home loan guaranty entitlement to refinance a loan previously guaranteed, insured or made by the Administrator which is outstanding on the dwelling or farm residence owned and occupied by the veteran as the veteran's home.

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

§ 36.4508

Title 38—Pensions, Bonuses, and Veterans' Relief

[35 FR 18872, Dec. 11, 1970, as amended at 46 FR 43675, Aug. 31, 1981]

§ 36.4508 Transfer of property by borrower.

(a) Veterans' Administration shall not include in the loan contract any provisions which will impede the right of a veteran to convey, transfer, or otherwise alienate whatever right or title the veteran may have in the property purchased or constructed with the aid of the proceeds of a direct loan, except that Veterans' Administration may include in the loan instruments such provisions as may be deemed necessary for the protection of the security and the Federal Government.

(b) Whenever any veteran disposes of residential property securing a direct loan obtained under 38 U.S.C. chapter 37, the Veterans Administration, upon application made by such borrower, shall issue to the borrower a release relieving the borrower of all further liability to the Veterans Administration on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Veterans Administration has determined, after such investigation as it deems appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1817(a). The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Veterans Administration may require. Any release of liability granted to a veteran by the Veterans Administration shall inure to the spouse of such veteran.

(c) If, on or after July 1, 1972, any veteran disposes of the property securing a direct loan obtained under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 1817(a) and a default subsequently occurs which results in liability of the veteran to the Administrator on account of the loan, the Administrator may relieve the veteran of such liability if the Administrator determines that:

(1) A transferee either immediate or remote is legally liable to the Adminis-

trator for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Administrator is found to have been a satisfactory credit risk at the time the transferee acquired the property.

[15 FR 6289, Sept. 29, 1950, as amended at 33 FR 5362, Apr. 4, 1968; 37 FR 24034, Nov. 11, 1972; 46 FR 43675, Aug. 31, 1981]

§ 36.4509 Joint loans.

(a) No loan will be made unless an eligible veteran is the sole principal obligor, or such veteran and spouse or eligible veteran co-applicant are the principal obligors thereon, nor unless such veteran alone, or together with a spouse or eligible veteran co-applicant, acquire the entire fee simple or other permissible estate in the realty for the acquisition of which the loan was obtained. Nothing in this section shall preclude other parties from becoming liable as comaker, endorser, guarantor, or surety.

(b) Notwithstanding that an applicant and spouse or other co-applicant are both eligible veterans and will be jointly and severally liable as borrowers, the original principal amount of the loan may not exceed the maximum permissible under § 36.4503(a). In any event the loan may not exceed \$33,000. (38 U.S.C. 1811(d)(2)(A) and (3))

[43 FR 60460, Dec. 28, 1978]

§ 36.4510 Prepayment, acceleration, and liquidation.

(a) Any credit on the loan not previously applied in satisfaction of matured installments, other than the gratuity credit required by prior provisions of law to be credited to principal, may be reapplied by Veterans Administration at the request of the borrower for the purpose of curing or preventing a default.

(b) Veterans' Administration shall include in the instruments evidencing or securing the indebtedness provisions relating to the following:

(1) The right of the borrower to prepay at any time without premium or fee, the entire indebtedness or any part thereof: *Provided*, That any such prepayment, other than payment in full, may not be made in any amount less than the amount of one installment, or \$100, whichever is less: *And provided further*, That any prepayment made on other than an installment due date will not be credited until the next following installment due date, but not later than 30 days after such prepayment.

(2) The right of Veterans' Administration to accelerate the maturity of the entire indebtedness in the event of default.

(3) The right of Veterans Administration to foreclose or otherwise proceed to liquidate or acquire property which is the security for the loan in the event of the borrower's delinquency in the repayment of the obligation or in the event of default in any other provisions of the loan contract.

(c) Veterans' Administration shall have the right to accelerate the entire indebtedness and to foreclose or otherwise proceed to liquidate, or acquire the security for the loan, in the event the veteran is adjudged a bankrupt, or if the property has been abandoned by the borrower or subjected to waste or hazard, or in the event conditions exist which warrant the appointment of a receiver by court.

(d) If, subsequent to the closing of the loan, title to the property which is security for such loan is restricted against sale or occupancy on the ground of race, color, or national origin, by restrictions created and filed of record by the borrower, such action, at the election of Veterans Administration, shall constitute an event of default entitling Veterans Administration to declare the unpaid balance of the loan immediately due and payable.

[15 FR 6289, Sept. 20, 1950, as amended at 20 FR 6260, Aug. 26, 1955; 24 FR 2658, Apr. 7, 1959; 41 FR 44859, Oct. 13, 1976]

§ 36.4511 Advances after loan closing.

(a) The Veterans Administration may at any time advance any sum or sums as are reasonably necessary and proper for the maintenance, repair, alteration, or improvement of the secu-

rity for a loan or for the payment of taxes, assessments, ground or water rights, or casualty insurance thereon: *Provided*, That no advance shall be made for alterations or improvements which are not necessary for the maintenance or repair of the security if such advance will increase the indebtedness to an amount in excess of \$33,000.

(b) All sums disbursed incident to the making of advances under this section shall be added to the indebtedness. Veterans' Administration may require any such advances to be secured ratably and on a parity with the principal indebtedness, or otherwise secured. The sum so advanced shall be evidenced by a supplemental note or otherwise as may be required by Veterans' Administration.

(c) Veterans' Administration may pay and charge against the indebtedness, or against the proceeds of the sale of any security therefor, any expense which is reasonably necessary for collection of the debt, protection, repossession, preservation, or liquidation of the security or of the lien thereon, including a reasonable amount for trustees' and legal fees.

[15 FR 6289, Sept. 20, 1950, as amended at 38 FR 33772, Dec. 7, 1973; 41 FR 44859, Oct. 13, 1976]

§ 36.4512 Taxes and insurance.

(a) In addition to the monthly installment payments of principal and interest payable under the terms of the loan agreement, the borrower will be required to make payments monthly to Veterans' Administration in such amounts as may be determined by Veterans' Administration from time to time to be necessary for the purpose of accumulating funds sufficient for the payment of taxes and assessments, ground rents, insurance premiums, and similar levies or charges on the security property.

(b) The borrower shall maintain insurance against fire and such other hazards as may be required by the Veterans' Administration, in such type or types and in such amounts as may be satisfactory to the Veterans' Administration, covering the improvements then or thereafter on the prop-

erty securing the loan. Flood insurance will be required in respect to any loan closed on and after March 2, 1974, if the security is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and in which the sale of flood insurance is available under the national flood insurance program. The amount of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the national flood insurance program, whichever is less. All such hazard and flood insurance shall be carried with a company or companies satisfactory to the Veterans' Administration and the policies and renewals thereof shall be held in the possession of the Veterans' Administration and have attached thereto a mortgagee loss payable clause in favor of and in form satisfactory to the Veterans' Administration.

(c) The borrower at loan closing shall pay in cash to Veterans' Administration such sum as it estimates may be necessary as the initial deposit to the borrower's tax and insurance reserve account.

[15 FR 6289, Sept. 20, 1950, as amended at 39 FR 7785, Feb. 23, 1974]

§ 36.4513 Foreclosure and liquidation.

In the event of a foreclosure sale or other liquidation of the security for a loan, Veterans' Administration shall credit upon the indebtedness the greater of:

(a) The net proceeds of the sale, or

(b) The current market value of the property as determined by Veterans Administration, less the costs and expenses of liquidation.

In no event shall the credit pursuant to paragraph (b) of this section exceed the amount of the gross indebtedness, nor shall such credit be less than the amount legally required to be credited to the indebtedness under local law. If a deed in lieu of foreclosure is accepted, the consideration will be a full and complete release of liability of the obligors, or such lesser amount as may be agreed upon between the obligors and Veterans Administration.

[23 FR 2340, Apr. 10, 1958]

§ 36.4514 Eligibility requirements.

Prior to making a loan, or a commitment therefor, Veterans' Administration shall determine that:

(a) The applicant is an eligible veteran.

(b) The applicant has full capacity under local law to enter into binding contracts.

(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred by him and that the proposed payments on such obligation bear a proper relationship to his present and anticipated income and expenses.

(d) Private capital is not available in the area at an interest rate not in excess of the rate authorized for guaranteed home loans for a loan for which the veteran is qualified under 38 U.S.C. 1810.

(e) The applicant is unable to obtain a loan for such purpose from the Secretary of Agriculture, under the Bankhead-Jones Farm Tenant Act, as amended, or under the Housing Act of 1949.

(f) In respect to a loan application received on or after September 15, 1956, there has been compliance by the applicant with the certification requirements prescribed in 38 U.S.C. 1804(c).

(g) The applicant has certified, in such form as the Administrator shall prescribe, that

(1) Neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, or national origin;

(2) He recognizes that any restrictive covenant on the property relating to race, color, religion, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

[15 FR 6290, Sept. 20, 1950, as amended at 20 FR 6260, Aug. 26, 1955; 24 FR 2658, Apr. 7, 1959; 36 FR 13032, July 13, 1971]

§ 36.4515 Estate of veteran in real property.

(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a loan hereunder, or owned by him and on which improvements on a farmhouse are to be financed by such loan, shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Chief Benefits Director, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located; (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien. The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section.

(b) Any such property or estate will not fail to comply with the requirements in paragraph (a) of this section by reason of the following:

- (1) Encroachments;
- (2) Easements;
- (3) Servitudes;
- (4) Reservations for water, timber, or subsurface rights;
- (5) Right in any grantor or cotenant in the chain of title, or a successor of

either, to purchase for cash, which right by the terms thereof is exercisable only if—

(i) An owner elects to sell,

(ii) The option price is not less than the price at which the then owner is willing to sell to another, and

(iii) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner, of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by Veterans Administration in the particular case.

The limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, shall be taken into account in the appraisal of reasonable value.

[15 FR 6290, Sept. 20, 1950, as amended at 24 FR 2658, Apr. 7, 1959; 28 FR 11506, Oct. 29, 1963; 33 FR 18027, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 45 FR 20472, Mar. 28, 1980]

§ 36.4516 Lien requirements.

(a) Loans for the purchase of a dwelling or for the purchase of a farm on which there is a farm residence shall be secured by a first lien on the property or estate. Loans for the construction of a farm residence or other dwelling shall also be secured by a first lien.

(b) Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall be secured in the following manner:

(1) Loans for \$1,500 or less need not be secured, and in lieu of the title ex-

amination a statement may be accepted from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4515(a).

(2) Loans for more than \$1,500 but 40 percent or less of the prior to the improved reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed.

(3) Loans for more than \$1,500 and for more than 40 percent of the prior to the improved reasonable value of such property shall be secured by a first lien on the property or estate. However, such a home improvement loan may be secured by a lien immediately subordinate to the lien securing the previous loan extended by the Administrator, if the Veterans Administration is the holder of all liens of superior priority on the property. (38 U.S.C. 1811(d)(1))

(c) Tax liens, special assessment liens, and ground rent shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Administrator, Chief Benefits Director, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Administrator may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Administrator determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Administrator's determination must have been made prior to the recordation of the covenant.

[20 FR 6261, Aug. 26, 1955, as amended at 20 FR 9180, Dec. 10, 1955; 23 FR 2340, Apr. 10, 1958; 34 FR 9561, June 18, 1969; 45 FR 20472, Mar. 28, 1980]

§ 36.4517 Incorporation by reference.

The regulations concerning direct loans to veterans in effect on the date a loan is closed shall govern the rights, duties, and liabilities of the parties to such loan during the period Veterans' Administration is the holder thereof, and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

[15 FR 6290, Sept. 20, 1950]

§ 36.4518 Supplementary administrative action.

Notwithstanding any requirement condition, or limitation stated in or imposed by the regulations in this part concerning direct loans to veterans, the Chief Benefits Director, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Administrator, may take such action as may be necessary or appropriate to relieve any undue prejudice to a debtor, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under § 36.4520.

[23 FR 2340, Apr. 10, 1958]

§ 36.4519 Eligible purposes and reasonable value requirements.

(a) A loan may be made only for the purpose hereinafter set forth in this paragraph, and the loan may not exceed the reasonable value of the property as established by the Veterans Administration:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home;

(2) To purchase a farm on which there is a farm residence to be occupied by the veteran as a home;

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as a home;

(4) To repair, alter, or improve a farm residence or other dwelling owned and occupied by the veteran as his or her home;

(5) To make energy conservation improvements to a dwelling owned and occupied by the veteran as his or her home. (38 U.S.C. 1811(b))

(6) To refinance (38 U.S.C. 1810(a)(5)) existing mortgage loans or other liens which are secured of record on a dwelling or farm residence owned and occupied by the veteran as the veteran's home; (38 U.S.C. 1811(b))

Provided. The veteran certifies, in such form as the Administrator may prescribe, that he or she has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) In the case of a loan for the construction of a farm residence or other dwelling on land owned by the veteran, a portion of the loan proceeds may be expended to liquidate an indebtedness secured by a lien against such land, but only if the reasonable value of the land is equal to or in excess of the amount of the indebtedness secured by such lien and if the liquidation of such indebtedness will permit the loan to be secured by a first lien. Except as provided in § 36.4507, no portion of the proceeds of a loan for repairs, alterations or improvements to a farm residence or other dwelling may be expended to liquidate a prior lien against the property.

(c) No direct loan may be made for the purpose of an interest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8). (38 U.S.C. 1811(b))

[20 FR 6261, Aug. 26, 1955, as amended at 43 FR 60461, Dec. 28, 1978; 45 FR 20473, Mar. 28, 1980; 46 FR 43675, Aug. 31, 1981]

§ 36.4520 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Veterans Administration heretofore or hereafter appointed to, or otherwise lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limita-

tions and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to the making of loans and the rights and liabilities arising therefrom, including but not limited to the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or sale of loans, the management and disposition of secured or unsecured notes and other property. In connection with direct loans made and held by the Veterans Administration, such designated employees may take any action which they are authorized to consent to or approve in respect to guaranteed or insured loans under the regulations prescribed therefor by the Administrator. Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Administrator evidence of guaranty and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b) Designated positions:

Chief Benefits Director
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Chief Benefits Director, be re-delegated.

(c) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Administrator under 38 U.S.C.

210(c) or 1815(b) or to sue or enter appearance for and on behalf of the Administrator or confess judgment against the Administrator in any court without the Administrator's prior authorization.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours. (38 U.S.C. 210(c)(1), 1820(a)(5))

[23 FR 2340, Apr. 10, 1958, as amended at 43 FR 60461, Dec. 28, 1978; 45 FR 21243, Mar. 1, 1980; 46 FR 43675, Aug. 31, 1981]

§ 36.4521 Minimum property and construction requirements.

No loan for the purchase or construction of residential property shall be made unless such property complies or conforms with those standards of planning, construction, and general acceptability applicable thereto which have been prescribed by the Administrator.

[23 FR 2340, Apr. 10, 1958]

§ 36.4522 Waivers, consents, and approvals.

No waiver, consent, or approval required or authorized by the regulations concerning direct loans to veterans shall be valid unless in writing signed by Veterans' Administration.

[15 FR 6291, Sept. 20, 1950]

§ 36.4523 Geographical limits.

Any real property purchased, constructed, or improved with the proceeds of a loan under 38 U.S.C. 1811 shall be situated in the United States, which for purposes of 38 U.S.C. ch. 37 is here defined as the several States, Territories, and possessions, and the District of Columbia, the Common-

wealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands: *Provided*. That no loan shall be made pursuant to 38 U.S.C. 1811 unless the real property is located in one of the areas designated from time to time by the Veterans Administration as an area in which private capital is not available under 38 U.S.C. Chapter 37 to eligible veterans for financing of the purchase, construction, repairs, alterations, or improvement of a farm residence or other dwelling, as the case may be.

[46 FR 43675, Aug. 31, 1981]

§ 36.4524 Sale of loans.

In the event a direct loan is purchased from Veterans Administration at any time pursuant to the provisions of 38 U.S.C. 1811(g), Veterans Administration may issue a guaranty in connection therewith within the maximums applicable to loans guaranteed under 38 U.S.C. 1810 and such loans shall thereafter be subject to the applicable provisions of the regulations governing the guaranty or insurance of loans to veterans, and such part of the regulations concerning direct loans to veterans as may be inconsistent therewith or variant therefrom shall no longer govern the subsequent disposition of the rights and liabilities of any interested parties.

[24 FR 2659, Apr. 7, 1959]

§ 36.4525 Requirement of a construction warranty.

Any commitment to make a direct loan and any approval of a direct loan application issued or made on or after May 2, 1955, shall, if the purpose of the loan is to finance the construction of a dwelling or farmhouse or to finance the purchase of a newly constructed dwelling, be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a direct loan a warranty, in the form prescribed by the Administrator, that the property has been completed in substantial conformity with the plans and specifications upon which the Administrator

based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Administrator, and no direct loan shall be disbursed in full unless a copy of such warranty duly receipted by the purchaser is submitted to the Veterans' Administration.

[20 FR 2463, Apr. 14, 1955, as amended at 46 FR 43676, Aug. 31, 1981]

§ 36.4526 Issuance of fund reservation commitments.

(a) Any builder or sponsor proposing to construct one or more dwellings in an area designated as eligible for direct loans may apply for a commitment for the reservation of direct loan funds to be used for the making of loans to eligible veterans for the purchase or construction of such dwellings. Such commitment may be issued on such conditions as the Veterans Administration determines to be proper in the particular case and will be valid for a period of 3 months:

Provided, That the Veterans Administration may, for good and sufficient reasons, extend the period of the commitment. No commitment shall be issued unless the builder or sponsor shall have paid an amount equivalent to 2 percent of the funds being reserved, which amount shall be nonrefundable. The commitment shall be nontransferable except with the written approval of the Veterans Administration.

(b) Notwithstanding that direct loan funds may be available for reservation when issuance of a reservation commitment is requested by a builder or sponsor, Veterans Administration may withhold issuance of such commitment in any case in which it determines that the experience or technical qualifications of the builder in respect to home construction are not acceptable, or that other factors bearing on the likelihood of the success of the proposed project are such as to justify withholding issuance of a fund reservation commitment.

[23 FR 2340, Apr. 10, 1958]

SALE OF LOANS, GUARANTEE OF PAYMENT

§ 36.1600 Sale of loans, guarantee of payment.

(a) The Administrator of Veterans Affairs hereby guarantees, in accordance with the provisions of this section, the payment of all loans sold by the Veterans Administration.

(b) Wherever the term "holder" appears in this section it shall mean the purchaser of a loan sold by the Administrator and any subsequent transferee or assignee of such loan.

(c) The holder of each loan sold subject to guaranty shall be deemed to have agreed with the Administrator as follows:

(1) To furnish the Administrator with notice of default within 30 days after a loan has become two full installments in default.

(2) To maintain on the real estate a lien of the dignity assigned or transferred to the purchaser by the Administrator.

(3) To maintain insurance in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality, and to apply the proceeds of loss payments to the loan balance or to the restoration of the security, as the holder may in the holder's discretion deem proper. Flood insurance will be required in respect to any loan closed on and after March 2, 1974, if the security is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and in which the sale of flood insurance is available under the national flood insurance program. The amount of flood insurance required will be equal to the outstanding balance of the loan or the maximum limit of coverage available for the particular type of property under the national flood insurance program, whichever is less.

(4) To obtain a consideration equal to the fair market value of any real estate released from the first lien securing the loan, except where the loan will be paid in full, and to apply the entire consideration in reduction of the principal balance of the loan.

(5) To maintain the tax and insurance account as provided for in the loan instruments and to pay accrued taxes, special assessments, ground or water rents and premiums on fire or other insurance properly chargeable to the tax and insurance account.

(6) To submit to the Administrator notice of any suit or action or other legal or equitable proceeding to which the holder is a party (including a copy of every procedural paper filed on behalf of the holder or served on the holder), brought on or in connection with a loan sold under this section or involving title to, or other lien on, the property securing the loan, within the time that would be required if the Administrator were a party to the proceeding.

(7) To submit to the Administrator for prior approval any proposal to recast or extend the repayment terms of the loan.

(8) To take no action to accelerate the indebtedness or terminate the debtor's interest in the property without the prior approval of the Administrator.

(9) To make advances only for the maintenance and repairs reasonably necessary for the preservation of the security, or for the payment of accrued taxes, special assessments, ground or water rents, premiums on fire or other insurance against loss or damage to the property, or for other purposes approved in advance by the Administrator.

(10) To furnish the Administrator prompt notice of the cancellation of any repurchase endorsement or notice on the note or bond upon the payment in full of any loan sold pursuant to this section or of the release of the Administrator from liability to repurchase the loan.

(11) To maintain adequate accounting records and to provide the Administrator with such data relating to the loan as the Administrator may request incident to the Administrator's determination of the amount payable in connection with a request for the repurchase of the loan.

(12) To service the loans properly in accordance with established practices.

(13) To permit the Administrator to inspect, examine or audit at reason-

able times and places the records of loans which are subject to repurchase under this section.

(14) To sell any loan to the Administrator for the amount specified in paragraph (e)(1) of this section upon request of the Administrator if the loan is six (6) full installments or more in default.

(15) To dispose of partial payments in accordance with the provisions of this subparagraph. A partial payment is a remittance on a loan in default of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered; a default is a failure of a borrower to comply with the terms of a loan agreement.

(i) Except as provided in paragraph (c)(15)(ii) of this section, or upon the express waiver of the Administrator, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(ii) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(a) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(b) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;

(c) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;

(d) The payment is less than the amount agreed to in a written repayment plan;

(e) The amount tendered is in the form of personal check and the holder

has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(f) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged.

(g) The loan has been submitted to the Veterans Administration for repurchase;

(h) The lien position of the security instrument would be jeopardized by acceptance of the partial payment.

(iii) A failure by the holder to comply with the provisions of this subparagraph may result in a deduction from the repurchase price pursuant to paragraph (e)(1) of this section. (38 U.S.C. 1820)

NOTE: In any instance in which the holder desires Veterans Administration prior approval to a proposed action the holder may submit the facts to the Loan Guaranty Officer as provided in paragraph (i) of this section.

(d) The Administrator's guaranty liability under this section shall consist of and be limited solely to liability to repurchase the loan from the holder thereof whenever,

(1) The debtor is in default by reason of nonpayment of not less than two full installments and default has continued for three months or more on the date the holder submits its written request for repurchase by the Administrator; or

(2) The property securing the loan has been abandoned by the debtor; or

(3) The debtor has failed to comply with any other covenant or obligation of the loan contract and on the date of the holder's request for repurchase such failure has continued for more than 90 days after the holder's demand for compliance with the covenant or obligation, except that if the failure is due to nonpayment of real estate taxes the failure to pay when due has persisted for a continuing period of 180 days; or

(4) The Administrator determines, upon request of the holder to repurchase any loan, that such repurchase is in the best interests of the Government notwithstanding that the account is ineligible for repurchase

under paragraphs (d) (1) through (3) of this section.

(e) (1) A cash payment shall be made to the holder upon the repurchase of a loan by the Administrator and shall be an amount equal to the price paid by the purchaser when the loan was sold by the Administrator, less repayments received by the holder which are properly applicable to the principal balance of the loan, plus any advances made for the purposes described in paragraph (c)(9) of this section, but no payments shall be made for accrued unpaid interest, except that with respect to loans sold by the Administrator after July 15, 1970, payment will be made for unpaid accrued interest from the date of the first uncured default to the date of the claim for repurchase, but not in excess of interest for 120 days. If, however, there has been a failure of any holder to comply with the provisions of paragraph (c) of this section the Administrator shall be entitled to deduct from the repurchase price otherwise payable such amount as the Administrator determines to be necessary to restore the Administrator to the position the Administrator would have occupied upon repurchase of the loan in the absence of any such failure. Incident to the repurchase by the Administrator, the holder will pay to the Administrator an amount equal to the balance, if any, remaining in the tax and insurance account.

(2) The holder shall be deemed to have received as trustee for the benefit of the Administrator any amounts received on account of the loan indebtedness subsequent to submitting its request to repurchase and shall pay such amounts to the Veterans Administration upon the assignment and delivery of the note, bond and security instruments to the Veterans Administration.

(3) The holder may be reimbursed at any time for any costs or expenses incurred which are approved in advance by the Administrator as being necessary to protect the Government's interests.

(f) Notwithstanding any other provision of this section, the Administrator shall be released from liability and shall not be obligated to repurchase any loan in respect to which:

(1) An obligor has been released from personal liability by any act or omission of the holder without the prior approval of the Administrator, except that a holder shall not be under any duty to establish the debt as a valid claim against the assets of the estate of any deceased or bankrupt obligor when such failure will not impair the validity or effectiveness of the lien securing the loan; or

(2) The holder has instituted foreclosure action against the property securing the loan without the prior approval of the Administrator, and such action has proceeded to the point where the judicial sale or sale under the power in the deed of trust has been held or the owner's interest in the property has been terminated by the holder by strict foreclosure, acceptance of a voluntary deed, or by other liquidation action; or

(3) Any material alteration has been made to the note, bond, security instrument, or installment sale contract after sale and delivery of the instruments by the Administrator to the purchaser.

(g) (1) Each employee of the Veterans Administration heretofore or hereafter appointed to or lawfully filling, any position designated in subparagraph (2) of this paragraph is hereby delegated authority within the limitations and conditions prescribed by law to exercise the powers and functions of the Administrator with respect to the sale, assignment, transfer, and repurchase of loans, including, but not limited to the offering of such loans for sale, the acceptance of purchase offers, the assignment or transfer of notes or bonds and security instruments evidencing the loans sold, granting the prior approval of the Administrator under this section, determining the eligibility of the loans for repurchase and to calculate and pay the sum due the holder upon repurchase of the loan by the Veterans Administration.

(2) Designated positions:

Chief Benefits Director.
Director, Loan Guaranty Service.
Director, Regional Office.
Director, Medical and Regional Office Center.
Director, VA Center.

Loan Guaranty Officer.

Assistant Loan Guaranty Officer.

(h) No waiver, consent, or approval required or authorized by this section shall be valid unless in writing signed by an employee of the Veterans Administration authorized in this section to act for the Administrator.

(i) Whenever prior approval or consent of the Administrator is desired in respect to an action to be taken by a holder of a loan, the holder may address such request to the Loan Guaranty Officer in the Regional Office or Center having jurisdiction over the area in which the real estate security is located.

(j) Notwithstanding any requirement, condition, or limitation stated in or imposed by this section concerning the sale and repurchase of loans, the Chief Benefits Director, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Administrator may take such action as may be necessary or appropriate to relieve undue prejudice to a holder, debtor or other person, which might otherwise result, as long as such action shall not impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by an employee authorized to act under paragraph (g) of this section.

(k) This section will apply to all loans sold by the Veterans Administration after the effective date of this section which were originated or acquired by the Administrator of Veterans Affairs under chapter 37, title 38, U.S.C., or title III of the Servicemen's Readjustment Act of 1944, as amended, except that it shall not apply to direct loans sold pursuant to section 1811(g) of chapter 37, title 38, U.S.C.

(38 U.S.C. 210(c), 1803(c)(1), 1819(g), 1820)

[27 FR 2686, Mar. 22, 1962, as amended at 39 FR 7785, Feb. 28, 1974; 44 FR 25839, May 3, 1979; 45 FR 31065, May 12, 1980]

PART 39—STATE CEMETERY GRANTS**AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES**

Sec.

39.1 Definitions.

39.2 Scope of the State cemetery grants program.

39.3 Applications with respect to projects.

39.4 Disallowance of a grant application and notice of a right to hearing.

39.5 Responsibilities following project completion.

39.6 State to retain control of operations.

39.7 Recapture.

39.8 General standards for site selection and construction of State veterans' cemeteries.

AUTHORITY: 38 U.S.C. 1008.

SOURCE: 44 FR 55867, Sept. 28, 1979, unless otherwise noted.

Aid to States for Establishment, Expansion, and Improvement of Veterans' Cemeteries**§ 39.1 Definitions.**

For the purpose of this part:

(a) The term "establishment" means the process of site selection, land acquisition, development planning, contouring, landscaping, and construction necessary to convert a tract of land to an operational cemetery. (38 U.S.C. 1008(c)(2))

(b) The term "expansion" means an increase in the burial capacity or acreage of a cemetery through the addition of gravesites and/or cemeterial facilities. (38 U.S.C. 1008(c)(2))

(c) The term "improvement" means the enhancement of a cemetery through landscaping, nonrecurring maintenance, or addition of other features appropriate to cemeteries. (38 U.S.C. 1008(c)(2))

(d) The term "time phased development plan" means a detailed, narrative description of the proposed site's characteristics, schedule for development, and estimates of costs by phases of construction. (38 U.S.C. 1008(c)(2))

(e) The term "project" means an undertaking to establish, expand, or improve a specific site for use as a State-owned veterans' cemetery. (38 U.S.C. 1008(c)(2))

(f) The term "State" means each of the several States, Territories and pos-

sessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (38 U.S.C. 101(20))

(g) The term "veteran" means a person who served in the active military, naval, or air service and who died while in service or was discharged or released therefrom under conditions other than dishonorable. (38 U.S.C. 1002)

§ 39.2 Scope of the State cemetery grants program.

(a) Subject to the availability of an appropriation, the Administrator may approve grants to assist any State in establishing, expanding, or improving veterans' cemeteries which are or will be owned by such State. In order to qualify for assistance under this program, a cemetery must be operated solely for the interment of veterans, their wives, husbands, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. (38 U.S.C. 1008(c)(2) and 101(4))

(b) The amount of the Federal contribution to a State is limited to 50 percent of the combined value of the land to be acquired or dedicated for cemetery purposes and the dollar value of the improvements to be made. The remaining 50 percent of the project's cost will be contributed by the State. (38 U.S.C. 1008(b)(2))

(c) A State may dedicate for the purposes of the cemetery involved land which it already owns. The value of land of this nature can be included in the computation of the State's portion of the funding for the establishment of a State veteran's cemetery. The value of the land, however, cannot exceed 50 percent of the State's total contribution to the project's cost. "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-agency Land Acquisition Conference—1973) shall be used as guidelines when determining the value of the land. (38 U.S.C. 1008(b)(3))

§ 39.3 Applications with respect to projects.

(a) A State seeking Federal assistance for establishment, expansion, or improvement of a State veterans' cemetery shall submit to the Administrator a preapplication and an application for such assistance in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A-102, Revised. The applicant shall submit as a part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 50 per centum of the estimated cost of construction of such project.

(2) A description of the site for such project.

(3) Plans and specifications as required by § 39.8.

(4) Any comments or recommendations made by appropriate State (and areawide) clearinghouses pursuant to policies outlined in part I, OMB Circular No. A-95, Revised. (38 U.S.C. 1008(a)(1))

(b) The applicant must furnish reasonable assurance that:

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment of eligible persons as set forth in §§ 39.1(g) and 39.2(a).

(2) Title to such site is or will be vested solely in the State.

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(4) It will comply with the provisions of: Executive Order 11988, 3 CFR 1977 Comp., p. 117 relating to floodplain management and Executive Order

11752, relating to the prevention, control, and abatement of environmental pollution.

(5) It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

(6) It will obtain approval by the Administrator of the final working drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; it will submit to the Administrator for prior approval changes that alter the costs of the project, use of space, or functional layout; it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

(7) It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Administrator may require.

(8) It will operate and maintain the facility in accordance with standards as prescribed under § 39.5.

(9) It will give the Administrator and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.

(10) It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-19.603). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(11) It will cause work on the project to be commenced within a reasonable

time after receipt of notification from the Administrator that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

(12) It will not dispose of or encumber its title or other interests in the site and facilities.

(13) It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measure necessary to effectuate this agreement. This assurance shall obligate the applicant for the period during which the site is operated as a State veterans' cemetery.

(14) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(15) It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

(16) It will comply with all requirements imposed by the Veterans Administration concerning special requirements of law, program requirements, and other administrative requirements in accordance with OMB Circular A-102, Revised.

(17) It will comply with the provisions of the Hatch Act which limits the political activity of employees.

(18) It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local government.

(19) It will insure that the facilities under its ownership which shall be uti-

lized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Veterans Administration of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(20) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(21) It will assist the Veterans Administration in its compliance with section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the Veterans Administration of the existence of any such properties, and by (ii) complying with all requirements established by the Veterans Administration to avoid or mitigate adverse effects upon such properties.

(c) The Administrator will approve any such application if the Administrator finds that there are sufficient funds available to make the grant requested with respect to such project and that:

(1) It has been determined by the Veterans Administration that the application meets the requirements of paragraphs (a) and (b) of this section.

(2) The plans and specifications for such project are in accordance with § 39.8.

(3) The State has established procedures for determining reasonableness, allowability, and allocability of costs in accordance with the provisions of Federal Management Circular 74-4.

(4) The State is not receiving more than 20 per centum of the total amount appropriated for such grants for such fiscal year. (38 U.S.C. 1008(b)(1))

(d) The Administrator shall certify approved applications to the Secretary of the Treasury in the amount of the grant requested, but in no event an amount greater than 50 percent of the estimated cost of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, to any agency or instrumentality of the applicant. Funds paid for the establishment, expansion, or improvement of a State veterans' cemetery will be used solely for carrying out such project as so approved. (38 U.S.C. 1008(c)(2))

(e) Any amendment of any application, whether or not approved under paragraph (c) of this section, will be subject to review and approval pursuant to the regulations governing grants to States for establishment, expansion, and improvement of State veterans' cemeteries in the same manner as an original application. (38 U.S.C. 1008(c)(1))

(f) Sums provided under paragraph (d) of this section shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated. If all funds from a grant have not been utilized by a State for the purpose for which the grant was made within 3 years after the Administrator has certified the approved application for such grant to the Secretary of the Treasury, the United States shall be entitled to recover any such unused grant funds from such State. (38 U.S.C. 1008(d))

§ 39.4 Disallowance of a grant application and notice of a right to hearing.

(a) No application for the establishment, expansion or improvement of State veterans' cemeteries shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall be in accord with the provisions of §§ 18.9 and 18.10, Title 38, CFR. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available. (38 U.S.C. 1008(c)(2))

§ 39.5 Responsibilities following project completion.

(a) The State shall, within a reasonable period following completion of such project, cause to be affixed at the main entrance to the veterans' cemetery suitable public acknowledgment of VA cemetery grant assistance in the form of a sign which shall be designed and furnished by the Veterans Administration. (38 U.S.C. 1008(c)(2))

(b) State veterans' cemeteries established, expanded, or improved with assistance under this program shall be operated and maintained as follows:

(1) The cemetery shall be maintained as a suitable memorial to the veterans interred.

(2) Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local health standards.

(3) The cemetery shall be kept safe for public use.

(4) Buildings, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration.

(5) The cemetery shall be kept open for public use at reasonable hours and times of the year. (38 U.S.C. 1008(c)(1))

(c) The Administrator, in coordination with the State, shall:

(1) Audit such projects at their completion in accordance with audit proce-

dures as established by the VA Office of the Inspector General.

(2) Inspect the project at completion for compliance with the standards set forth in § 39.8; and at least once in every 3-year period following completion of the project, and throughout the period the facility is operated as a State veterans' cemetery.

(d) At the completion of such inspections, the VA inspector(s) shall submit a written report to the Director, State Cemetery Grants Program, giving the date and location where the inspection was made and citing any deficiencies and corrective action taken or proposed. (38 U.S.C. 1008(c)(2))

(e) Failure of the State to comply with paragraphs (a) through (c) of this section shall be considered cause for the Veterans Administration to suspend any payments due a State on any or all projects until the situation involved is corrected. (38 U.S.C. 1008(c)(2))

§ 39.6 State to retain control of operations.

Neither the Administrator nor any employee of the Veterans Administration shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery constructed, expanded, or improved with assistance received under this program except as prescribed in this part. (38 U.S.C. 1008(c)(2))

§ 39.7 Recapture.

If a State which has received a grant to establish, expand, or improve a veteran's cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery. (38 U.S.C. 1008(b)(4))

§ 39.8 General standards for site selection and construction of State veterans' cemeteries.

(a) *General.* (1) The various codes, requirements, recommendations (as well as any amendments or revisions) of State and local authorities or technical and professional organizations, to the extent and manner in which reference is made in these standards, are applicable to grants for construction of State veterans' cemeteries. Additional information concerning these standards may be obtained from the Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) These standards constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 1008.

(3) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. These standards must be followed where they exceed State or local codes and regulations. Conversely, compliance is required with State and local codes where such requirements provide a higher standard. However, the additional cost, if any, in using standards which are higher than those of the VA (Veterans Administration) should be carefully considered and justified.

(4) The space criteria and area requirements referred to in these standards should be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be required by the program but are subject to approval by VA. Substantial deviation from the space or area standards should be carefully considered and justified, except for occasional variances which would require individual justification. Failing to meet or exceeding the standards by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. VA participation may be subject to proportionate reduction in those projects which unjustifiably exceed maximum space or area criteria.

(b) *Site Planning Standards*—(1) *Site Selection*—(i) *Location*. The land should be located as closely as possible to the densest veteran population in the area under consideration.

(ii) *Size*. Sufficient acreage should be available to provide gravesites for estimated needs for at least 20 years. Acreage could vary depending on the State veteran population and National Cemetery availability.

(iii) *Accessibility*. The site should be readily accessible by highway, bus, railroad, or other public transportation.

(iv) *Topography*. The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly and infirm visitors. The land should not be subject to flooding.

(v) *Water Table*. The water table should be lower than the maximum proposed depth of burial.

(vi) *Soil requirement*. The soil should be free from rock, muck, quicksand, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting lawns, shrubs, and trees, with normal care and without the addition of topsoil.

(vii) *Utilities*. Electricity and/or gas should be available (if required).

(viii) *Water Supply*. An adequate supply of water should be available.

(ix) *Sanitary sewer*. An approved means to dispose of storm flow and sewage from the facility should be available.

(2) *Site Development Requirements*. (i) *General*. The development plan shall provide for adequate hardsurfaced roads, walks, parking areas, public rest rooms, flag circle, protective enclosure of the area, and a main gate. Pedestrian gates should also be provided at the main gate for activities that may be necessary or appropriate when the main gates are closed.

(ii) *Road widths*. Road widths shall be compatible with proposed traffic flows and volumes.

(iii) *Surface and Structure Parking*. All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of one handicapped space to every twenty regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces.

(iv) *Pavement Design*. The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(v) *Curbs*. Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Free standing curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a "roll-type" cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control.

(vi) *Curb Radii*. The radii of curbs at road intersections shall not be less than 20'-0".

(vii) *Curb Ramps (Curb Cuts)*. Curb ramps shall be provided to accommodate the physically handicapped and lawnmowers. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have non-slip surfaces.

(viii) *Walks*. Walks shall be designed with consideration for the physically handicapped. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps

and platforms shall have nonslip surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(ix) *Steps.* Exterior steps may be included in the site development as long as provisions are also provided for use by physically handicapped persons.

(x) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(xi) *Landscaping.* (A) The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum.

(B) Plants having thorns, or branches and leaves ending in thorns should not be used in heavy pedestrian traffic areas.

(C) Where lawn areas are to be mowed, layout spaces and planting beds should be designed to provide adequate room to accommodate mowing equipment.

(D) If necessary as preventive maintenance, edging should be provided around planting beds.

(E) Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(xii) *Surface Drainage.* Surface grades shall be determined in coordination with the architectural, structural and mechanical design of buildings and facilities so as to provide proper surface drainage.

(xiii) *Burial Areas—(A) General.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. All applicable dimensions to roadways, fences, utilities or other structures shall be indicated on the layout.

(B) *Area Standard.* The VA standard for computing gravesite yield from net burial acreage is 600 gravesites per acre. This figure normally can account for roads, utilities, and other service related structures. Depending on the character of the land and the way in which the cemetery is to be developed, a minimum of 50 percent of the gross acreage available at the site should be designated as burial acreage. A site proposed for development as a veterans' cemetery should be adequate to meet the State's projected interment needs for a minimum of twenty years.

(C) *Gravesites.* Gravesites should be laid out in uniform pattern. There should be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum carrying distance from the edge of a permanent road to any gravesite should not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(D) *Monumentation.* It is advisable that permanent gravesite control markers be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones. Markers may be either flat or upright, but must be uniform throughout the cemetery.

(c) *Architectural Design Standards—*

(1) *Architectural and Structural Requirements—*(i) *Fire Safety Codes.* The latest edition of the National Fire Codes (a compilation of National Fire Protection Association Codes, Standards, recommended practices and manuals) will be the design criteria. Fire safety construction features not included in the National Fire Codes shall be designed in accordance with the requirements of the latest edition

of the National Building Code (American Insurance Association). Where the adopted codes state conflicting requirements, the National Fire Codes shall govern.

(ii) *State and Local Codes.* In addition to compliance with the standards set forth in this document, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations of any one of the following national codes shall apply insofar as such recommendations are not in conflict with the standards set forth in this document.

(A) *National Building Code.* American Insurance Association, Engineering and Safety Services, 85 John Street, New York, New York 10038.

(B) *Basic Building Code.* Building Officials Conference of America, 1313 East 60th Street, Chicago, Illinois 60637.

(iii) *Occupational Safety and Health Standards.* Applicable standards as contained in the Occupational Safety and Health Act must be observed.

(iv) *Handicapped Provisions.* Applicable standards as contained in ANSI Standard No. A117.1 ("Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped") must be observed.

(2) *Mechanical Requirements.* The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations, and the regulations of the National Fire Protection Association and the National Board of Fire Underwriters and the minimum general standards as set forth. Where there is no local or State boiler code, the recommendations of the American Society of Mechanical Engineers (ASME) shall apply. The design and specifications shall comply with the standards relating to the control of air pollution.

(3) *Plumbing Requirements.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in these regulations. Where no State or local codes are in force, the National Plumbing

code AASA-A40.8, latest edition, shall apply.

(4) *Electrical Requirements.* The installation of electrical work and equipment shall comply with the National Electrical Codes (NFPA Nos. 70, 76A, and 72E) all local and State codes and laws applicable to electrical installations and the minimum general standards as set forth in these regulations. The regulations of the local utility company shall govern service connections. Aluminum busways should not be used as a conducting medium in the electrical distribution system.

(5) *Space Criteria.* Space criteria for cemetery buildings at active VA national cemeteries are published in chapters 701 and 703 of VA Handbook H-08-9, Planning Criteria for VA Facilities, which can be inspected at or made available through the VA address listed in paragraph (a)(1) of this section.

(d) *Plan Preparation—(1) General.* The requirements contained herein have been established for the guidance of the State agency and the architect to provide a standard for preparation of drawings, specifications and estimates.

(2) *Predesign Conferences.* A conference is recommended for all major construction projects primarily to ensure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project.

(3) *Preapplication Requirements.* No plans and specifications will be required with the preapplication submission to the VA. A location map showing the location of the project and all appropriate demographic boundaries shall be incorporated in the preapplication submission.

(4) *Application Requirements—(1) Boundary and Site Survey and Soil Investigation.* (A) The State agency shall provide for a survey and soil investigation of the site and furnish a legal description of the site. The purpose of this survey and soil investigation is to obtain data necessary for the evaluation of the site as a cemetery, structural design and utility service connections. A boundary and site survey need not be submitted if one was submitted for a previously ap-

proved project and there have been no changes. Relevant information may then be shown on the site plan.

(B) If required the survey shall show:

(1) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as hereinafter specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(2) The point of beginning, bearing, distances, and interior angles. Closures computations shall be furnished with the survey and error of closure shall not exceed 1 foot for each 10,000 feet or lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners), shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.

(3) The area of the parcel in acres or in square feet.

(4) The location of all monuments.

(5) Delineation of 100-year floodplain and source.

(6) The signature and certification of the Surveyor.

(C) Soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements. A new soil investigation is not required if one was done for a previously approved project on the same site and information contained is adequate and unchanged. Soil investigation when done shall be documented in a signed report.

(1) Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions.

(2) The following information shall be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(iii) The elevation of rock, if known, and the probability of encountering quicksand.

(3) The elevations and location of tops of workings relative to the site, if the site is underlaid with mines, or old workings are located in the vicinity.

(ii) *Preliminary Site Plan.* A site plan showing the proposed layout of all facilities on the selected site shall be included as an exhibit to the formal application. If the project is to be phased into different year programs, the phasing shall be indicated. The preliminary site plan shall be submitted on standard 28 inch by 42 inch plan sheets as a scale sufficiently large to show necessary details or dimensions.

(iii) *Preliminary Architectural Drawings.* All buildings are to be shown on drawings accompanying the application. The drawings must comply with the following requirements:

(A) A site plan of the immediate area around the building shall be drawn to a convenient scale and shall show the building roof plan, utility services, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow and any other appropriate items.

(B) Floor plans of all levels at a convenient scale shall be double line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures and interior finish schedule.

(C) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(D) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) *Final Working Drawings and Specifications.* Prior to the release of funds for the construction of any project being sponsored under this program, the VA must approve the final working drawings and specifications.

(1) Final working drawings shall be prepared so that clear and distinct prints may be obtained, accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for complete VA review and comment. Separate drawings shall be prepared for each of the following types of work: Architectural, structural, heating and ventilating, plumbing and electrical. They shall include the following:

(i) *Architectural Drawings.* Site plan showing all new topography, grades, existing buildings, roadways, walks and areas to be seeded. All structures and other work to be removed; all floor plans and a roof plan if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings. All details to complete the proposed work and finish schedules.

(ii) *Planting Drawings.* (A) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.

(B) Contours, scale, north arrow, legend showing existing trees.

(C) A graphic or keyed method of showing plant types as well as quantities of each plant.

(D) Plant list with the following: key, quantity, botanical name, common name, size and remarks (i.e., balled and burlaped, container, 3 stem clump, specimen, etc.)

(E) Typical tree and shrub planting details.

(F) Areas to be seeded or sodded.

(G) Areas to be mulched.

(iii) *Layout Drawings.* Submit a layout plan which shows the following:

(A) Roadways, walks, buildings, scale and north arrow, boundary lines and fence lines.

(B) Section layout with permanent section monument markers and lettering system.

(C) Gravesite layout and numbering system.

(D) Gravesites which are obstructed.

(E) Direction the headstone faces.

If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed and reserved gravesites.

(iv) *Equipment Drawings.* Large scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment.

(v) *Structural Drawings.* Complete foundation and framing plans and details. General notes to include: governing code, material strengths, live loads, windloads, foundation design values, and seismic zone.

(vi) *Mechanical Drawings.* Heating and ventilation drawings showing complete systems and details of air conditioning, heating ventilation and exhaust. Plumbing drawings showing sizes and elevations of soil and waste systems; sizes of all hot and cold water piping; drainage and vent systems; plumbing fixtures and riser diagrams.

(vii) *Electrical Drawings.* Separate drawings for lighting and power. Service entrance, feeders and all characteristics. All panel, breaker, switchboard and fixture schedule. All lighting outlets, receptacles, switches, power outlets and circuits. Telephone layout, fire alarm systems and emergency lighting.

(2) Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover of title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(3) Show in convenient form and detail the estimated total cost of the work to be performed under the contract including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work.

(4) All of the above requirements must be met and approved prior to the State agency advertising for bids.

(f) *Final Review and Approval—(Bid Tabulations and Cost Estimates)*. (1) The State agency shall submit itemized bid tabulations; assurance, if required; and a revised Grant application form reflecting final cost in the project. If there are non-VA partici-

pating areas, these should be itemized separately.

(2) Following VA approval of bid tabulations and cost estimates, a Memorandum of Agreement executing the grant awards will be signed by the Administrator.

BLANK PAGE

374

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

BLANK PAGE

376

Material Approved for Incorporation by Reference

The Director of the Federal Register approves the following incorporations by reference effective July 1, 1982, unless otherwise noted (5 U.S.C. 552(a) and 1 CFR Part 51). For more information on incorporation by reference, see the preliminary pages of this volume.

38 CFR CHAPTER I (PART 18 TO END) VETERANS ADMINISTRATION

38 CFR

American National Standards Institute

(This standard is available at the Office of Human Goals, Veterans Administration, Room 900, 1425 K St., N.W., Washington, DC 20420. Mailing Address: 810 Vermont Ave., N.W., Washington, DC 20420)

ANSI A117.1-61(R 71)—Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped. 18.423

Department of Housing and Urban Development

(This material is available for public inspection at Veterans Administration field installations; at Information Center Room 1202, Department of Housing and Urban Development, 451 Seventh St., S.W., Washington, DC 20410; and at HUD Regional, Area, and Insuring Offices)

HUD 4900.1 Minimum Property Standards for One- and Two-Family Dwellings, Nov., 1980. 36.4360

BLANK PAGE

378

Table of CFR Titles and Chapters

(As of June 18, 1982)

Title 1—General Provisions

Chap.

- I Administrative Committee of the Federal Register (Parts 1-49)
- II Office of the Federal Register (Parts 50-299)
- III Administrative Conference of the United States (Parts 300-399)
- IV Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

Proclamations

Executive Orders

Presidential Documents Other Than Proclamations and Executive Orders

- I Executive Office of the President (Parts 100-199)

Title 4—Accounts

- I General Accounting Office (Parts 1-99)
- II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
- III General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

- I Office of Personnel Management (Parts 1-1199)
- II Merit Systems Protection Board (Parts 1200-1299)
- III Office of Management and Budget (Parts 1300-1399)
- IV Advisory Committee on Federal Pay (Parts 1400-1499)
- V The International Organizations Employees Loyalty Board (Parts 1500-1599)
- VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
- IX Appalachian Regional Commission (Parts 1900-1999)
- XI United States Soldiers' and Airmen's Home (Parts 2100-2199)
- XIV Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

Title 5—Administrative Personnel—Continued

Chap.

- XV Office of Administration, Executive Office of the President
(Parts 2500-2599)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)

SUBTITLE B—Regulations of the Department of Agriculture

- I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
- II Food and Nutrition Service, Department of Agriculture (Parts 210-299)
- III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
- IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
- V Agricultural Research Service, Department of Agriculture (Parts 500-599)
- VI Soil Conservation Service, Department of Agriculture (Parts 600-699)
- VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
- VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
- IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
- X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
- XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
- XII Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399) [Reserved]
- XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
- XV Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
- XVI Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
- XVII Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
- XVIII Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
- XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
- XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

Title 7—Agriculture—Continued

- Chap.
- XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
 - XXVI Office of the Inspector General, Department of Agriculture (Parts 2600-2699)
 - XXIX Office of Energy, Department of Agriculture (Parts 2900-2999)
 - XXX Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
 - XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

- I Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

- I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
- II Packers and Stockyards Administration, Department of Agriculture (Parts 200-299)
- III Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

- I Nuclear Regulatory Commission (Parts 0-199)
- II Department of Energy (Parts 200-699)
- III Department of Energy (Parts 700-999)
- X Department of Energy (General Provisions) (Parts 1000-1099)
- XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

- I Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

- I Comptroller of the Currency, Department of the Treasury (Parts 1-199)
- II Federal Reserve System (Parts 200-299)
- III Federal Deposit Insurance Corporation (Parts 300-399)
- IV Export-Import Bank of the United States (Parts 400-499)
- V Federal Home Loan Bank Board (Parts 500-599)
- VI Farm Credit Administration (Parts 600-699)
- VII National Credit Union Administration (Parts 700-799)
- VIII Federal Financing Bank (Parts 800-899)
- XI Federal Financial Institutions Examination Council (Parts 1100-1199)

Title 12—Banks and Banking—Continued

Chap

- XII Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

- I Small Business Administration (Parts 1-199)
III Economic Development Administration, Department of Commerce (Parts 300-399)
IV Chrysler Corporation Loan Guarantee Board (Parts 400-499)
V Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

- I Federal Aviation Administration, Department of Transportation (Parts 1-199)
II Civil Aeronautics Board (Parts 200-399)
V National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

- I Bureau of the Census, Department of Commerce (Parts 20-199)
II National Bureau of Standards, Department of Commerce (Parts 200-299)
III International Trade Administration, Department of Commerce (Parts 300-399)
IV Foreign-Trade Zones Board (Parts 400-499)
V United States Metric Board (Parts 500-599)
VI Bureau of Industrial Economics, Department of Commerce (Parts 600-699)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
XII United States Travel Service, Department of Commerce (Parts 1200-1299)
XIII East-West Foreign Trade Board (Parts 1300-1999)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

- XX Office of the United States Trade Representative (Parts 2000-2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

- XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

Chap.

- I Federal Trade Commission (Parts 0-999)
- II Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

- I Commodity Futures Trading Commission (Parts 1-199)
- II Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

- I Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
- III Delaware River Basin Commission (Parts 400-499)
- IV Office of Water Resources Research, Department of the Interior (Parts 500-599)
- VI Water Resources Council (Parts 700-799)
- VIII Susquehanna River Basin Commission (Parts 800-899)
- XIII Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

- I United States Customs Service, Department of the Treasury (Parts 1-199)
- II United States International Trade Commission (Parts 200-299)
- III International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

- I Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
- II Railroad Retirement Board (Parts 200-399)
- III Social Security Administration, Department of Health and Human Services (Parts 400-499)
- IV Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
- V Employment and Training Administration, Department of Labor (Parts 600-699)
- VI Employment Standards Administration, Department of Labor (Parts 700-799)
- VII Benefits Review Board, Department of Labor (Parts 800-899)
- VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

- I Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
- II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

Chap.

- I Department of State (Parts 1-199)
- II Agency for International Development, International Development Cooperation Agency (Parts 200-299)
- III Peace Corps (Parts 300-399)
- IV International Joint Commission, United States and Canada (Parts 400-499)
- V International Communication Agency (Parts 500-599)
- VI United States Arms Control and Disarmament Agency (Parts 600-699)
- VII Overseas Private Investment Corporation (Parts 700-799)
- VIII Employee-Management Relations Commission (Parts 800-899)
- IX Foreign Service Grievance Board (Parts 900-999)
- X Inter-American Foundation (Parts 1000-1099)
- XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
- XII United States International Development Cooperation Agency (Parts 1200-1299)
- XIII Board for International Broadcasting (Parts 1300-1399)
- XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)

Title 23—Highways

- I Federal Highway Administration, Department of Transportation (Parts 1-999)
- II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

- I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
- II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)
- III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
- IV Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)
- V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)

Title 24—Housing and Urban Development—Continued

Chap

- VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
- VII New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)
- VIII Low-Income Housing, Department of Housing and Urban Development (Parts 800-899)
- IX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 1700-1799)
- X Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
- XV Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
- XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699)
- XXV Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

- I Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
- II Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
- IV Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

- I Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

- I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

- I Department of Justice (Parts 0-199)
- III Federal Prison Industries, Department of Justice (Parts 300-399)
- V Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)

SUBTITLE B—Regulations Relating to Labor

- I National Labor Relations Board (Parts 100-199)

Title 29—Labor—Continued

- Chap.
- II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)
 - III National Railroad Adjustment Board (Parts 300-399)
 - IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)
 - V Wage and Hour Division, Department of Labor (Parts 500-899)
 - IX Construction Industry Collective Bargaining Commission (Parts 900-999)
 - X National Mediation Board (Parts 1200-1299)
 - XII Federal Mediation and Conciliation Service (Parts 1400-1499)
 - XIV Equal Employment Opportunity Commission (Parts 1600-1699)
 - XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)
 - XX Occupational Safety and Health Review Commission (Parts 2200-2499)
 - XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)
 - XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)
 - XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

- I Mine Safety and Health Administration, Department of Labor (Parts 1-199)
- II Geological Survey, Department of the Interior (Parts 200-299)
- III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
- VI Bureau of Mines, Department of the Interior (Parts 600-699)
- VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)

SUBTITLE B—Regulations Relating to Money and Finance

- I Monetary Offices, Department of the Treasury (Parts 51-199)
- II Fiscal Service, Department of the Treasury (Parts 200-399)
- IV Secret Service, Department of the Treasury (Parts 400-499)
- V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
- VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
- VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

SUBTITLE A—Department of Defense

- Chap.
- I Office of the Secretary of Defense (Parts 1-499)
 - V Department of the Army (Parts 500-699)
 - VI Department of the Navy (Parts 700-799)
 - VII Department of the Air Force (Parts 800-1099)
- SUBTITLE B—Other Regulations Relating to National Defense**
- XII Defense Logistics Agency (Parts 1200-1299)
 - XVI Selective Service System (Parts 1600-1699)
 - XIX Central Intelligence Agency (Parts 1900-1999)
 - XX Information Security Oversight Office (Parts 2000-2099)
 - XXI National Security Council (Parts 2100-2199)
 - XXIV Office of Science and Technology Policy (Parts 2400-2499)
 - XXVII Office for Micronesia Status Negotiations (Parts 2700-2799)
 - XXVIII Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

- I Coast Guard, Department of Transportation (Parts 1-199)
- II Corps of Engineers, Department of the Army (Parts 200-399)
- IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)

SUBTITLE B—Regulations of the Offices of the Department of Education

- I Office for Civil Rights, Department of Education (Parts 100-199)
- II Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
- III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
- IV Office of Vocational and Adult Education, Department of Education (Parts 400-499)
- V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
- VI Office of Postsecondary Education, Department of Education (Parts 600-699)
- VII Office of Educational Research and Improvement, Department of Education (Parts 700-799)
- VIII Office of Education for Overseas Dependents, Department of Education (Parts 800-899) [Reserved]

Title 35—Panama Canal

Chap.

- I Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

- I National Park Service, Department of the Interior (Parts 1-199)
- II Forest Service, Department of Agriculture (Parts 200-299)
- III Corps of Engineers, Department of the Army (Parts 300-399)
- IV American Battle Monuments Commission (Parts 400-499)
- V Smithsonian Institution (Parts 500-599)
- VII Library of Congress (Parts 700-799)
- VIII Advisory Council on Historic Preservation (Parts 800-899)
- IX Pennsylvania Avenue Development Corporation (Parts 900-999)
- X Commission of Fine Arts (Parts 1000-1099)
- XI Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)

Title 37—Patents, Trademarks, and Copyrights

- I Patent and Trademark Office, Department of Commerce (Parts 1-199)
- II Copyright Office, Library of Congress (Parts 200-299)
- III Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

- I Veterans Administration (Parts 0-99)

Title 39—Postal Service

- I United States Postal Service (Parts 1-999)
- III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

- 1 Environmental Protection Agency (Parts 1-799)
- V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

- 1 Federal Procurement Regulations (Parts 1-1—1-99)
- 3 Department of Health and Human Services (Parts 3-1—3-99)
- 4 Department of Agriculture (Parts 4-1—4-99)
- 5 General Services Administration (Part 5-1—5-99)
- 5A Office of Acquisition Policy, General Services Administration (Parts 5A 1—5A 99)
- 5B Office of Acquisition Policy, General Services Administration (Parts 5B 1—5B 99)

Title 41—Public Contracts and Property Management—Continued

Chap.

- 6 Department of State (Parts 6-1-6-99)
- 7 Agency for International Development, International Development Cooperation Agency (Parts 7-1-7-99)
- 8 Veterans Administration (Parts 8-1-8-99)
- 9 Department of Energy (Parts 9-1-9-99)
- 10 Department of the Treasury (Parts 10-1-10-99)
- 12 Department of Transportation (Parts 12-1-12-99)
- 13 Department of Commerce (Parts 13-1-13-99)
- 14 Department of the Interior (Parts 14-1-14-99)
- 14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1-14H-99)
- 14R Office of Water Research and Technology, Department of the Interior (Parts 14R-1-14R-99)
- 15 Environmental Protection Agency (Parts 15-1-15-99)
- 16 Office of Personnel Management (Parts 16-1-16-26)
- 18 National Aeronautics and Space Administration (Parts 18-1-18-99)
- 19 International Communication Agency (Parts 19-1-19-99)
- 20 Nuclear Regulatory Commission (Parts 20-1-20-99)
- 22 Community Services Administration (Parts 22-1-22-99)
- 23 United States Arms Control and Disarmament Agency (Parts 23-1-23-99)
- 24 Department of Housing and Urban Development (Parts 24-1-24-99)
- 25 National Science Foundation (Parts 25-1-25-99)
- 28 Department of Justice (Parts 28-1-28-99)
- 29 Department of Labor (Parts 29-1-29-99)
- 34 Department of Education (Parts 34-1-34-99)
- 44 Federal Emergency Management Agency (Parts 44-1-44-99)
- SUBTITLE B—Other Provisions Relating to Public Contracts
- 50 Public Contracts, Department of Labor (Parts 50-1-50-999)
- 51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1-51-99)
- 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1-60-99)
- SUBTITLE C—Federal Property Management Regulations System
- 101 Federal Property Management Regulations (Parts 101-1-101-99)
- 105 General Services Administration (Parts 105-1-105-999)
- 109 Department of Energy, Property Management Regulations (Parts 109-1-109-99)
- 114 Department of the Interior (Parts 114-1-114-99)
- 115 Environmental Protection Agency (Parts 115-1-115-99)
- 128 Department of Justice (Parts 128-1-128-99)

Title 41—Public Contracts and Property Management—Continued

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

Chap.

- I Public Health Service, Department of Health and Human Services (Parts 1-199)
- III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
- IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

- I Bureau of Reclamation, Department of the Interior (Parts 200-499)
- II Bureau of Land Management, Department of the Interior (Parts 1000-9999)

Title 44—Emergency Management and Assistance

- I Federal Emergency Management Agency (Parts 0-399)
- IV Department of Commerce and Department of Transportation (Parts 400-499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Welfare

- II Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
- III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
- IV Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400-499)
- V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
- VI National Science Foundation (Parts 600-699)
- VII Commission on Civil Rights (Parts 700-799)
- VIII Office of Personnel Management (Parts 800-899)
- X Community Services Administration (Parts 1000-1099)
- XI National Foundation on the Arts and the Humanities (Parts 1100-1199)
- XII ACTION (Parts 1200-1299)

Title 45—Public Welfare—Continued

- Chap.
- XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
 - XVI Legal Services Corporation (Parts 1600-1699)
 - XVII National Commission on Libraries and Information Science (Parts 1700-1799)
 - XVIII Harry S Truman Scholarship Foundation (Parts 1800-1899)
 - XIX National Commission on the Observance of International Women's Year (Parts 1900-1999)
 - XXI Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

- I Coast Guard, Department of Transportation (Parts 1-199)
- II Maritime Administration, Department of Transportation (Parts 200-399)
- III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
- IV Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

- I Federal Communications Commission (Parts 0-199)
- II Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

- SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)
- SUBTITLE B—Other Regulations Relating to Transportation
- I Research and Special Programs Administration, Department of Transportation (Parts 100-199)
- II Federal Railroad Administration, Department of Transportation (Parts 200-299)
- III Federal Highway Administration, Department of Transportation (Parts 300-399)
- IV Coast Guard, Department of Transportation (Parts 400-499)
- V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
- VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
- VII National Railroad Passenger Corporation (AMTRAK) (Parts 700-799)
- VIII National Transportation Safety Board (Parts 800-899)
- IX United States Railway Association (Parts 900-999)
- X Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

Chap.

- I United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
- II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
- III International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
- IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
- V Marine Mammal Commission (Parts 500-599)
- VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of June 18, 1982)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Inspector General, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the	
Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII

Agency	CFR Title, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Defense	44, IV
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Education, Department of	

Agency	CERCLA, Subtitle or Chapter
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Procurement Regulations System	41, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Education for Overseas Dependents, Office of	34, VIII
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIX
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C

Agency	CFR Title, Subtitle or Chapter
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, IX, XX
Housing Management, Office of Assistant Secretary for	24, IV
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Solar Energy and Energy Conservation Bank	24, X
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, IX, XX
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water Research and Technology, Office of	41, 14R
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Development Cooperation Agency	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations, Office of Assistant Secretary	29, II

Agency	CFR Title, Subtitle or Chapter
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesia Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 41, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 41, 16; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV

Agency	CFR Title, Subtitle or Chapter
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of State Department	15, XX
Federal Procurement Regulations System	22, I
Surface Mining and Reclamation Appeals, Board of	41, 6
Susquehanna River Basin Commission	30, III
Tennessee Valley Authority	18, VIII
Trade Representative, United States, Office of	18, XIII
Transportation, Department of	15, XX
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
Maritime Administration	46, II
National Defense	44, IV
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23

Agency	CFR Title, Subtitle or Chapter
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Research and Technology, Office of	41, 14R
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

1973		38 FR	38 CFR—Continued	38 FR
38 CFR		Page	Chapter I—Continued	Page
Chapter I			21.4130 Introductory text re-	
21.130 (a) revised.....	14929		vised.....	14932
21.131 (c) revised; (e) removed....	14930		21.4131 (a)(4) removed.....	14933
21.132 (g) revised; (l) removed....	14930		21.4134 Revised.....	14933
21.133 Revised.....	14930		21.4135 (e) and (h) revised.....	14933
21.136 Revised.....	14930		21.4136 (a), (c), (g), and (h) re-	
21.138 Added.....	14930		vised; (j) added.....	14933
21.145 Added.....	12213		21.4137 (a) revised; (e), (f), and	
21.253 (b)(2) revised.....	14930		(g) added.....	14934
21.1030 Revised.....	14930		21.4138 Revised; cross reference	
21.1032 Cross references re-			added.....	14934
vised.....	14930		21.4140 Revised.....	14935
21.1041 (a)(4) and (d)(2) re-			21.4145 Added.....	12214
vised.....	14930		21.4153 (c)(3) revised.....	14935
21.1045 (a) (2) and (4) and (b)			21.4200 (a)(2) and (c) revised.....	14935
revised; (a)(5) added.....	14931		21.4201 Revised.....	14935
21.3029 (b) revised.....	14931		21.4202 (a) revised.....	14935
21.3021 (a)(1)(iii) and (3)(i) re-			21.4203 (b)(1) and (2) (d)(1), (e),	
vised.....	12110		and (f)(1) and (2), revised.....	14935
21.3041 (d) introductory text			21.4204 (a), (c)(1), and (d) re-	
and (e)(3) revised; (d)(8)			vised.....	14936
added.....	14931		21.4206 (c) added.....	14936
(e)(2) revised.....	16220		21.4207 Introductory text re-	
21.3044 (c) added.....	14931		vised.....	14936
21.3046 Introductory text re-			21.4209 (a) and (c) revised.....	14936
vised.....	14931		21.4230 (d) revised.....	14936
21.3300 (c) revises.....	14931		21.4231 (b)(2) revised.....	14936
21.3333 (a) and (b) revised.....	14931		21.4232 (a) revised.....	14937
21.4005 (a) (1) and (2) and (b)(2)			21.4234 Introductory text,	
(iv) and (v) revised.....	14932		(b)(2), and (c) revised.....	14937
21.4006 Introductory text of (a)			21.4235 (a)(2) and (3) revised.....	14937
revised.....	14932		(a)(1) revised.....	14940
21.4020 Revised.....	14932		21.4236 Heading, (a), (b)(1), (c),	
21.4101 (b) revised.....	14932		and (d) revised.....	14937
21.4102 Revised.....	14932		21.4237 Added.....	14937
21.4106 Revised.....	14932		21.4250 (c)(2) and (4) revised.....	14937
			21.4251 (b) revised.....	10153

Title 38—Pensions, Bonuses, and Veterans' Relief

38 CFR—Continued

Chapter I—Continued	38 FR Page
(a)(3) and (4) revised; (a)(5) added.....	14938
21.4252 (e), (f)(1), and (g) revised.....	14938
21.4253 (a)(2) revised.....	14938
21.4256 Revised.....	14938
21.4260 Revised.....	14938
21.4261 Heading, (b)(1), and (c)(2) and (3) revised.....	14938
21.4262 Heading, (b)(1), (5), (6), and (7), and (c)(2), (4), (5), (7), (8), and (10) revised.....	14939
21.4264 (a) and (c) revised.....	14939
21.4270 Table amended.....	14939
21.4271 (c) revised.....	14939
21.4272 (c)(5) revised.....	8659
(d) revised.....	12110
(f)(2) and (g) revised.....	14939
21.4279 Added.....	7394

1973-1974

(Regulations published from July 1, 1973 through June 30, 1974)

38 CFR

38 (39*) FR
Page

Chapter I

18.2 Revised.....	17965
18.3 (b) revised.....	17965
18.4 Revised.....	17965
18.5 Removed; provision transferred to Appendix B.....	17966
18.6 (b) revised.....	17966
18.7 (b) revised.....	17966
18.8 (d) revised.....	17966
18.9 (b) and (d)(1) revised.....	17966
18.10 (a) through (e) revised; (g) added.....	17966
18.12 (a) and (c) revised.....	17967
18.13 (c), (f), and (h) revised; (i) added.....	17967
18 Appendix B added; provisions derived from 18.5.....	17968
21.42 Revised.....	33303
21.43 (b) revised.....	33303
21.201 (j) added.....	32578
21.226 (a)(1) revised.....	32578
21.261 (b)(4) added.....	32578
(b)(1) revised.....	34116
21.261 (b)(1) revised.....	*5315
21.1045 (a)(6) added.....	23948
21.3041 (d) Introductory text, (d)(8), and (e)(3) revised.....	*2362

NOTE: Symbol (*) identifies changes published in 1974.

38 CFR—Continued

Chapter I—Continued	38 (39*) FR Page
21.3044 (a) and (c) revised.....	*2362
21.3046 (c) revised.....	*2362
21.4131 (b) revised.....	32578
21.4136 (a) revised.....	32578
21.4200 (d) added.....	32579
21.4203 (b)(1) revised....	30439, 34116
(b)(4) added.....	32579
21.4205 (c)(1) revised.....	*20595
21.4206 (c) revised.....	*20595
21.4207 (a) revised.....	*1592
21.4253 (e)(3) revised.....	32579
21.4270 (c) and (d) revised.....	32579
21.4274 (a) revised.....	19371
21.4275 (c)(1) revised; (d) added.....	*7784
21.4280 Added.....	32579
25 Added.....	22779
36.4212 (a)(2) and (3) revised.....	20615
(a) revised.....	23519
36.4212 (a) introductory text and (a) (2) and (3) revised....	*3258, 14505
(a) (2) and (3) revised.....	*17441
36.4222 Revised.....	*7784
36.4310 Revised.....	25678
36.4311 (a) revised...18373,	20616, 23519
36.4311 (a) revised...*	3258, 14505, 17441
36.4326 Revised.....	20832
36.4326 Revised.....	*7785
36.4402 (f) added.....	*7785
36.4502 Revised.....	33772
36.4503 (a) revised...18373,	20616, 23519, 33772
36.4503 (a) revised...*	3258, 14505, 17441
36.4509 (b) revised.....	33772
36.4511 (a) revised.....	33772
36.4512 (b) revised.....	*7785
36.4600 (c)(3) revised.....	*7785

1974-1975

(Regulations published from July 1, 1974 through June 30, 1975)

38 CFR

39 (40+) FR
Page

Chapter I

21.201 (1)(1) through (4) correctly added.....	39040
(1)(4)(11) and (j) revised; (k) added.....	45236

NOTE: Symbol (+) refers to 1975 page numbers.

List of CFR Sections Affected

38 CFR—Continued

39 (40+) FR
Page

Chapter I—Continued

21.202 (b)(1), (2), and (3)(i) and (ii) revised.....	45236
21.268 Introductory text and (b) revised.....	28630
21.274 (a) revised.....	28630
21.278 Revised.....	28630
21.279 (a), (b)(3) and introductory text of (c) revised.....	28630
21.715 (c) revised.....	43219
21.716 Revised.....	43219
21.720 Revised.....	43219
21.735 (a) revised.....	43219
21.1030 Revised.....	43220
21.1032 (a) and (b) revised.....	43220
21.1041 (a)(3) and (4) revised; (d) introductory text revised.....	38227
21.1042 Revised.....	38227
21.1045 (a)(5) and (b)(2) revised; (f) and (g) added.....	31902
21.3030 Revised.....	43220
21.3031 (a) revised.....	43220
21.3032 (a) revised.....	43220
Cross reference revised.....	43220
21.3040 (c) and (d) revised.....	38227
21.3041 (d) introductory text, (1), (3), and (8) revised.....	38228
21.3045 Revised.....	31902
21.3046 Heading and introductory text, (a) heading and (b) heading, and (c) revised.....	31902
Revised.....	38228
21.4102 Revised.....	37986
21.4106 Revised.....	37986
21.4131 (a), (c), (d), and (e)(1)(i) revised.....	43220
21.4132 Revised.....	43220
21.4135 (h) revised.....	31902
(c)(2) and (d) heading amended.....	43220
21.4136 (f), (g)(2), (h) and (j)(1), (2) and (3) revised.....	43220
21.4137 (g)(2) and (3) revised.....	31902
21.4200 (b)(1) revised.....	43221
21.4202 (b)(1) and (5) revised.....	43221
21.4203 (b) introductory text and (b)(1) and (f) revised.....	31903
(a), (b) (1), and (d) introductory text revised.....	43221
21.4204 (a) and (e) revised.....	31903
21.4205 (a) introductory text revised.....	31903
(c)(2)(iii) revised.....	43221
21.4230 (c) revised.....	45236

Note: Symbol † refers to 1975 page numbers.

38 CFR—Continued

39 (40+) FR
Page

Chapter I—Continued

21.4232 (a) revised.....	45237
21.4233 Introduction, (b) introductory text, and (c)(1) revised; (e) added.....	45237
21.4234 (d) and (e)(3) revised.....	34036
(a) introductory text and (b) revised.....	45237
21.4235 (a) introductory text, (1) and (3), (e) and (f) revised.....	34037
21.4237 Heading, (a) introductory text, and (d) revised; (e), (f) and (g) added.....	34037
21.4270 (c) and (d) amended; footnote 7 added.....	45237
21.4271 (c) revised.....	45237
21.4279 (a)(2) revised.....	45237
21.4280 Revised.....	45237
36.4202 (a), (l), (m), (o), and (s) revised.....	†13212
36.4203 (a) revised.....	†13213
36.4204 (a) and (c) revised; (b) (5) and (6) added.....	†13213
36.4206 (b) and (c) revised.....	†13213
36.4207 (a) revised.....	†13213
36.4209 (g) added.....	†13214
36.4212 (a) (2) and (3) revised.....	26155, 30037
(a) introduction and (a)(2) and (3) revised.....	41707
(a) introduction and (a)(2) and (3) revised.....	†4143, 12076, 19643
36.4215 (a) revised.....	†13214
36.4216 (a), (c), (e), and (g) revised.....	†13214
36.4221 (c) revised.....	†13214
36.4231 (a) revised.....	†1514
Heading revised; (c) added.....	†13215
36.4232 (a)(5) and (6) removed; (d) added.....	† 1514
(d) introductory text revised.....	†13215
36.4251-36.4254 Undesignated center heading revised.....	†13215
36.4251 (b) and (c) revised.....	†13215
36.4252 (b) and (c) revised.....	†13215
36.4253 (e) and (f) revised.....	†13215
36.4254 (a) introductory text revised.....	†13215
36.4255 Added.....	†13215
36.4311 (a) revised.....	26155, 30038, 41707
(a) revised.....	†4143, 12076
Revised.....	†19643
36.4501 (n) revised.....	†4143

Title 38—Pensions, Bonuses, and Veterans' Relief

38 CFR—Continued

39 (40) FR
Page

Chapter I—Continued

36.4502 Revised.....	†4143
36.4503 (a) revised	26155,
	30038, 41707
(a) revised.....	†4143, 12076, 19643

1975—1976

(Regulations published from July 1,
1975 through June 30, 1976)

38 CFR

40 (41A) FR
Page

Chapter I

21.42 Footnote 5 revised.....	42878
21.43 (b) and (c) revised.....	42878
21.132 (j)(1) revised.....	31756
21.133 Revised.....	31756
21.134 Introductory text re- vised.....	31756
21.135 Revised.....	31756
21.136 Revised.....	31756
21.137 (c) revised.....	31756
21.138 (b) and (c) (2) and (3) re- vised.....	31756
21.145 (a), (b) (1) and (2), and (d) revised.....	31756
21.222 (b) revised.....	42879
21.225 Heading, introductory text, (a) and (b) revised.....	42879
21.274 (b) revised.....	31757
21.278 Revised.....	31757
21.700 Revised.....	31757
21.701 Revised.....	31757
21.705 Revised.....	31757
21.711 (a) revised.....	31757
21.715 (a) revised.....	31757
21.1021 (b), (d), and (e) revised...	31758
21.1022 Revised.....	31758
21.1040 (a), (e)(2), and introduc- tory texts of (b) and (e) re- vised.....	31758
21.1041 (a) (1) and (2), and (d) revised.....	31758
21.1045 (a)(2) and (b)(2) re- vised.....	31758
21.3022 Revised.....	42879
21.3023 (a) introductory text, (a)(2) and (d) revised.....	42879
21.3024 Text and cross refer- ence revised.....	42879
21.3040 (a)(2) revised.....	42879
21.3041 (d) Introductory text and (d)(7) revised.....	42879
21.3046 (c) revised.....	31759
21.3300 (c) revised.....	31759

NOTE: Symbol (†) refers to 1975 page numbers.

38 CFR—Continued

40 (41A) FR
Page

Chapter I Continued

21.3301 (a)(2) revised.....	31759
21.3330 (b)(1) revised.....	31759
21.3333 (a) and (b) revised.....	31759
21.4001 (a), (d), and (e) revised; (f) added.....	31759
21.4005 (a) (1) and (2) revised.....	31759
21.4009 (a), (c), (d), (f) through (i) and cross reference re- vised.....	42879
21.4135 (e), (o), (p)(1), (s) and (v)(2) revised.....	33824
(h)(1) revised.....	Δ26682
21.4136 (a), (b), and (c) revised...	31760
(j)(2) revised.....	Δ21190
21.4137 (a), (b), and (g)(2) and (3)(iii) revised.....	31761
21.4138 (b) and (c) revised.....	31761
21.4139 (a) and (b)(1) revised.....	31761
21.4145 (a), (b) (1) and (2), and (d) revised.....	31761
21.4153 (c)(3) revised.....	31761
(c)(4) removed; (d)(3) revised.....	42880
21.4200 (e) and (f) added.....	31762
(g) added.....	Δ26682
21.4202 (c)(1) revised.....	31762
(c) (2) revised.....	42880
21.4203 (b)(3) revised.....	31762
(c) and (d)(2) revised.....	33824
(b)(1) and (d) revised.....	Δ26682
21.4205 (c) (1) and (4) revised.....	31762
21.4206 Introductory text, (a) and (b) revised.....	31762
21.4208 (a) revised.....	31762
21.4230 (c) revised.....	31762
21.4233 Introductory text and (d) revised.....	31762
(a)(1) revised.....	Δ26682
21.4236 (c) and (d) revised.....	31763
21.4251 (g) revised.....	31763
21.4252 (b) introductory text, (b)(4), (e), (f) (1) and (2), (g), and (h) revised.....	31763
21.4253 (a)(1), (b), (d), (e) and (f) revised.....	33825
21.4256 Revised.....	42880
21.4264 Heading, (a)(2), (b) in- troductory text and (b)(3) re- vised.....	31763
(a) introductory text and (b) (3) revised.....	Δ26683
21.4265 Added.....	Δ26683
21.4270 (a) footnote 8 added.....	31763
21.4275 (c)(1) revised.....	42880
Revised.....	Δ26684

List of CFR Sections Affected

38 CFR—Continued

40 (41Δ) FR
Page

Chapter I—Continued

21.4276 (a), (b)(2), (d) and (e) (5) revised.....	42881
21.4277 Revised.....	33825
21.4278 (a) revised.....	42881
21.4500-21.4506 (Subpart F) Added.....	31764
36.4203 Revised.....	34588
36.4212 (a) (2) and (3) revised.....	42190
(a) (2) and (3) revised.....	Δ1913, 14864
36.4301 (a), (b), (i), (j), (n), (r), (aa), (dd), (ff), (hh), and (ii) revised.....	34589
(c), (d), (k), (l), (m), and (y) removed.....	34589
36.4302 (a), (b), (c), (g), and (h) revised.....	34589
36.4306 (a) introductory text and (c) revised.....	34589
36.4307 (a) and (b) revised.....	34590
36.4308 (e) removed.....	34590
36.4309 (a) revised.....	34590
36.4311 (a) revised.....	42190
(a) revised.....	Δ1913, 14864
36.4312 (a), (c), and (d) revised...	34590
36.4313 (c) and (e) revised.....	34591
36.4320 (h) (7) and (10) revised...	34591
36.4321 (c) revised.....	34591
36.4329 Revised.....	34591
36.4330 (a) revised.....	34591
36.4331 (a), (b), (c), (d), (e), (g), and (i) revised.....	34591
36.4335 Introductory text and (a) revised.....	34592
36.4336 (a) introductory text, (a) (3), and (b) revised.....	34592
36.4337 Removed.....	34593
36.4338 (a) revised.....	34593
36.4339 Revised.....	34593
36.4340 (a) revised.....	34593
36.4341 Revised.....	34593
36.4342 (b) and (c) revised.....	34593
26.4343 (a) and (b) revised.....	34593
36.4344 Removed.....	34593
36.4346 Removed.....	34593
36.4348 Removed.....	34593
36.4349 Removed.....	34593
36.4351-36.4353 Revised.....	34594
36.4354 Removed.....	34594
36.4355 (a) and (b) revised.....	34594
36.4358 Heading, Introductory text, (c) and (d) revised; (b) removed; (f) added.....	34594
36.4361 (a), (b), (d), and (e) revised.....	34594

NOTE: Symbol (Δ) refers to 1976 page numbers.

38 CFR—Continued

40 (41Δ) FR
Page

Chapter I—Continued

36.4362 Revised.....	34595
36.4363 (a), (c), and (d) revised...	34595
36.4364 (c) (1), (2), and (4), (d) introductory text, and (e) revised.....	34595
36.4365 Section and preceding center heading removed.....	34595
36.4390-36.4393 Undesignated center heading revised.....	34595
36.4390 Revised.....	34595
36.4391 Introductory texts of (b) and (c) revised.....	34595
36.4392 Amended.....	34596
36.4393 (a), (b), (f), (g), and (h) revised.....	34596
36.4503 (a) revised.....	42190
(a) revised.....	Δ1913, 14864

1976-1977

(Regulations published from July 1, 1976 through June 30, 1977)

38 CFR

41 (42*) FR
Page

Chapter I

21.3041 (e)(2) revised.....	47929
21.3042 (a), (b), and (d) revised...	47929
21.3043 Revised.....	47929
21.3044 (b) and (c)(1) revised.....	47929
21.4106 (b) revised.....	32217
21.4131 (a)(2) and (d) revised.....	47929
21.4203 (e) and (f)(1) revised.....	47929
21.4204 (a) revised.....	47929
21.4207 (a), (c), (d), and (e) revised.....	*14735
21.4233 (c)(1) introductory text revised.....	47930
(c)(1)(iii) revised.....	*14734
21.4235 (e) revised.....	47930
21.4250 (b)(2) revised.....	30640
21.4259 Revised.....	30640
21.4271 (a) and (b) revised.....	47930
21.4272 Introductory text, (a) through (e), and (f)(2) revised.....	47930
21.4274 (b) revised.....	47931
21.4279 (b)(1) revised.....	47931
21.4280 (a)(1) revised.....	47931
36.4205 (a) revised.....	32218
36.4210 Revised.....	32218
36.4212 (a) introductory text, (2) and (3) revised.....	47049

NOTE: Symbol (*) refers to 1977 page numbers.

Title 38—Pensions, Bonuses, and Veterans' Relief

38 CFR—Continued

41 (42*) FR
Page

Chapter I—Continued

(a) introductory text, (2), and (3) revised.....	*28883
36.4301 (gg) revised.....	32218, 44858
36.4311 (a) revised.....	47049
(a) revised.....	*28883
36.4350 (b)(5) revised.....	44039
36.4501 (o) revised; (p) re-moved.....	32218
(o) revised.....	44859
36.4502 Revised.....	44859
36.4503 (a) revised.....	44859, 47049
(a) revised.....	*28883
36.4504 (a) and (b)(2)(iii) re-vised.....	32218
36.4509 Revised.....	44859
36.4510 (b)(3) and (d) revised.....	44859
36.4511 (a) revised.....	44859

1977-1978

(Regulations published from July 1, 1977 through June 30, 1978)

38 CFR

42 (43†) FR
Page

Chapter I

18.3 (d) added.....	60144
21.1045 (f) revised.....	34517
21.4001 (c)(1) revised.....	†3707
21.4005 (a)(1) and (2), (b), (c), and (e) revised; (f) added.....	†3707
21.4233 (a)(1) revised.....	49454
21.4234 (d)(2) revised.....	49455
21.4235 (h) and (i) added.....	49455
21.4237 Heading, (a) introducto-ry text and (d) revised; (h) and (i) added.....	49455
21.4255 (d) and (e) revised; (f) added.....	†3909
21.4265 (c)(1) and (d) revised....	†25429
21.4272 (f) and (g) revised.....	49455
21.4275 (d) revised.....	†25429
36.4212 (a)(2) and (3) revised....	†9274, 22717
36.4311 ‡(a) revised.....	†9274, 22717
36.4503 (a) revised.....	†9274, 22717

NOTE: Symbol (*) refers to 1977 page numbers.

NOTE: Symbol † refers to 1978 page numbers.

1978-1979

(Regulations published from July, 1, 1978 through June 30, 1979)

38 CFR

43 (44Δ) FR
Page

Chapter I

21.41 Revised.....	35281
21.42 Revised.....	35282
21.130 Revised.....	35282
(a)(1)(i) revised.....	Δ25648
21.131 (b)(1)(i) revised.....	35283
21.132 (e) and (g) revised.....	35283
21.133 Revised.....	35283
21.134 (c) revised.....	35283
21.138 (d) and (e) added.....	35283
21.145 (a) revised.....	35284
21.201 Introductory text, (e), (f) (1), (g) introductory text, (1) and (5), (h) (1) and (3), and (i) introductory text, (2) and (3) introductory texts, (2) (ii), and (3) (iv) through (vii) re-vised.....	35284
21.202 (a)(3) revised.....	35285
21.204 (b) (1) through (3) re-vised.....	35285
21.205 Revised.....	35285
21.206 (a) introductory text and (3) revised.....	35286
21.207 Revised.....	35286
21.209 Revised.....	35286
21.222 (f) added.....	35286
21.223 Heading and (a) revised; (c) added.....	35286
21.260 Revised.....	35287
21.261 Revised.....	35287
21.262 Introductory text and (b)(1) revised.....	35287
21.701 Revised.....	35287
21.1020 (b) revised.....	35288
21.1021 Cross reference re-vised.....	35288
21.1040 Introductory text and (a) revised.....	35288
21.1041 (a) and (d) revised.....	35288
(d)(4) added.....	Δ23219
21.1042 Revised.....	35289
21.1045 (a) (2) and (5), (b), and (d) revised.....	35289
(f) revised.....	52486
21.3020-21.3333 (Subpart C) Heading revised.....	35289
21.3020 Introductory text and (b) revised.....	35289

NOTE: Symbol (Δ) refers to 1979 page numbers.

List of CFR Sections Affected

38 CFR—Continued

43 (44Δ) FR
Page

Chapter I—Continued

12.3021 (a)(1)(iii), (2) introductory text, (3) introductory text and (i), (c) and (d) revised.....	35290
21.3030 Revised.....	35290
21.3031 (a) revised.....	35290
21.3040 (d) revised.....	35290
21.3041 (d) introductory text and (e) revised.....	35290
21.3044 Revised.....	35290
21.3046 Revised.....	35291
21.3300 (c) revised.....	35291
21.3303 Introductory text, (a) and (b) revised.....	35291
21.3304 (b)(2), (c) (1) and (3), and (d) revised.....	35291
21.3305 (a) revised.....	35292
21.3333 (a) and (b) revised.....	35292
21.4009 (b) through (i) revised; (j) added.....	Δ15492
Cross reference removed.....	Δ15493
21.4130 Introductory text revised.....	35292
21.4135 (e), (g), (s), and (v) revised; (m) removed; (w) added.....	35292
21.4136 (a), (c), (d), (f), (h), and (j)(2) revised; (k) added.....	35293
21.4137 (a) revised; (g) (4) and (5) and (h) added.....	35294
21.4138 Revised.....	35295
21.4145 (a) revised.....	35295
21.4146 Added.....	35296
21.4153 (c)(3) revised; (c)(4) added.....	35296
21.4200 (e) revised; (h) through (m) added.....	35296
21.4201 Revised.....	35297
21.4202 (c) revised.....	35300
21.4203 (b)(1) and (c) revised; (d)(3) added.....	35300
(b)(1) revised.....	Δ25648
21.4205 (c)(5) added.....	35300
(c) (1) and (5) revised.....	Δ25649
21.4206 (a) revised.....	35300
21.4208 (a) revised.....	35300
21.4209 (a), (b)(2), and (f) revised; (b) (4) through (7) added.....	35300
21.4233 (a)(1) amended.....	35301
21.4235 (a)(1) revised; (j) added.....	35301
21.4236 (c) and (d) revised.....	35301
21.4251 (a) and (f) revised.....	35301
21.4252 (e), (f)(1), and (h) revised; (i) and (j) added.....	35302
21.4253 (d) revised.....	35302

NOTE: Symbol (Δ) refers to 1979 page numbers.

38 CFR—Continued

43 (44Δ) FR
Page

Chapter I—Continued

21.4256 Revised.....	35303
21.4266 Added.....	35303
21.4270 Revised.....	35304
21.4271 (c) revised.....	35307
21.4272 (a), (b), and (f)(1) revised.....	35307
(b)(3) revised.....	49982
21.4277 (a) revised.....	35307
21.4279 (a)(4) added; (b) revised.....	35308
21.4280 (a) (1) and (2), (b) and (c) revised.....	35308
21.4503 (b) (2), (3), and (4) revised.....	35308
21.4504 (b) revised.....	35309
21.4505 (b) revised.....	35309
36.4202 (m) revised.....	37197
(1) removed.....	Δ22723
36.4203 Revised.....	Δ22723
36.4204 Revised.....	Δ22723
36.4205 Revised.....	Δ22724
36.4207 (d) revised.....	Δ22725
36.4209 (b)(5), (e), (g) revised.....	Δ22725
36.4210 Revised.....	Δ22725
36.4212 (a) introductory text, (2) and (3) revised.....	29001
(a) introductory text, (2) and (3) revised.....	Δ24554
36.4221 (b) revised.....	Δ16014
36.4232 (b) and (d) revised.....	Δ16014
36.4252 (a) (5) and (6) removed; (a)(7) redesignated as (a)(5) and republished.....	Δ22725
36.4285 (a) and (b) amended; (e) revised; (f) added.....	Δ16015
36.4301 (ii) revised.....	60459
36.4302 (a), (c), and (i) revised....	60459
36.4303 (f) and (g) revised; (j)(4) amended.....	60460
36.4306 (a) introductory text revised.....	60460
36.4308 (g) added.....	53728
36.4311 (a) revised.....	29001
(a) revised.....	Δ24555
36.4340 (a) revised.....	51016
36.4342 (b) revised.....	60460
36.4351 Revised.....	51016
36.4502 Revised.....	60460
36.4503 (a) revised.....	29001, 60460
(a) revised.....	Δ24555
36.4509 Revised.....	60460
36.4519 (a) revised.....	60461
36.4520 (b) and (c) revised.....	60461
36.4600 (d)(3) and (e)(3) amended; (e)(1) and (g)(2) revised...	Δ25839

Title 38—Pensions, Bonuses, and Veterans' Relief

1979-1980

(Regulations published from July 1, 1979 through June 30, 1980)

38 CFR

44 (45*) FR
Page

Chapter I

21.133 Revised.....	62493
21.145 (a) revised.....	62493
21.201 (j)(1) and (2) revised; (j)(5) amended.....	62493
21.1021 Cross reference re- vised.....	62494
21.1032 (d) added.....	62494
21.1041 (a)(3), and (d) introduc- tory text and (2) revised.....	62494
21.1042 (a) and (b) revised.....	62494
21.1043 Added.....	62494
21.1045 (a)(2) and (b)(2) revised; (h) and (i) added.....	62495
21.3032 (c) added.....	62495
21.3045 Amended.....	62495
21.3046 Introductory text and (c) introductory text revised; (c)(3) amended; (d) added.....	62495
21.3300 (c) revised.....	62496
21.3333 (a) and (b) revised.....	62496
21.4008 Amended.....	*31062
21.4100 Revised.....	62496
21.4102 (b) heading and section amended.....	62496
21.4106 (a)(3) heading amend- ed.....	62496
21.4130 Introductory text and (b)(2) revised.....	62496
21.4133 Added.....	62496
Revised.....	*31062
21.4134 Revised.....	*31062
21.4135 (f), (j), and (k) revised...	*31063
21.4136 (a) and (c) revised.....	62496
21.4137 (f) amended; (a) re- vised.....	62497
21.4138 Cross reference re- moved.....	62497
21.4145 (a) revised.....	62497
21.4146 (f) added.....	62498
21.4153 (c)(4) authority citation amended; (c)(3) revised.....	62498
21.4154 Added.....	62498
21.4201 Revised.....	62498
21.4203 (a) revised.....	62501
(c) and (d) revised; (e) and (f)(2) amended; (h) added.....	*43171
21.4206 (a) and (c) revised; (d) added.....	62501
21.4207 (e) revised.....	*31063

NOTE: Symbol (*) refers to 1980 page numbers.

38 CFR—Continued

44 (45*) FR
Page

Chapter I—Continued

21.4236 (c) and (d) revised.....	62501
21.4250 (a) introductory text re- vised.....	54707
21.4251 (a)(1) amended; (a)(6) and (f) revised; (h) and cross reference added.....	62501
(e) revised.....	*43170
21.4252 (k) added.....	*31063
21.4266 (c) cross reference added; (c)(2) introductory text revised.....	62503
21.4270 Revised.....	62503
21.4277 Revised.....	62504
Cross reference note added.....	*43172
21.4279 (b)(1) revised.....	62505
21.4500 (d), (e)(4), (f) and (h) re- vised; (e)(6) and (i) added.....	62505
21.4501 Revised.....	62507
(a) and (b) revised.....	*17996
21.4502 (b)(1) and (4) revised; (b)(6) removed; (c) added.....	62507
21.4503 (b)(2), (3) and (4) re- vised.....	62508
21.4504 (a)(4) revised.....	62508
(a)(3) revised.....	*17996
21.4505 Redesignated as 21.4507 and revised; new 21.4505 added.....	62508
21.4506 Revised.....	62508
21.4507 Redesignated from 21.4505 and revised.....	62510
21.5001-21.5500 (Subpart G) added.....	*31
36 Incorporation by reference approval.....	*44090
36.4212 (a) introductory text, (2) and (3) revised.....	56330
(a) introductory text, (1) and (3) revised.....	58508, 61178
(a)(2) and (3) revised.....	62510
(a) revised.....	*10340, 14035
(a) revised.....	*24139, 26960
(a)(1) and (3) revised.....	*34270
36.4221 (d) added.....	*21243
36.4275 Heading revised; (f) added.....	*31064
36.4276 (b) revised.....	*38056
36.4301 (l), (aa), and (ff) amend- ed; (hh) revised.....	47337
(jj) added.....	*20472
36.4311 (a) revised.....	56330, 62510
(a) revised.....	*10341, 14036
Revised.....	*20472
(a) revised.....	*23688, 29293, 34271
36.4312 (d)(1)(iv) amended.....	47338

List of CFR Sections Affected

38 CFR—Continued

Chapter I—Continued	44 (45*) FR Page
36.4313 (b) revised.....	*38056
36.4315 Revised.....	*31065
36.4316 (a) revised.....	*31065
36.4318 (a) amended.....	*31065
36.4319 (b) and (c) amended.....	*31065
36.4342 (d) added.....	*31065
36.4350 (b)(5) amended.....	47338
36.4356 Added.....	47338
36.4357 Added.....	47339
36.4358 Revised.....	47339
36.4359 Added.....	47340
36.4360 Added.....	47341
36.4360a Added.....	47342
36.4362 Amended.....	47343
36.4501 (p) added.....	*20472
36.4503 (a) revised.....	56330, 62510
(a) revised...*	10341, 14036, 20472, 23688, 29293, 34271
36.4515 (b)(5)(iii) amended.....	*20472
36.4516 (b) revised; (c) amended.....	*20472
36.4519 (a)(5) added.....	*20473
36.4520 (d) added.....	*21243
36.4600 (c)(3) and (11) amended; (c)(15) added.....	*31065
39 Added; interim.....	55867

1980—1981

(Regulations published from July 1, 1980 through June 30, 1981)

38 CFR

Chapter I	45 (46†) FR Page
18 Incorporation by reference approvals.....	†33980
18.1—18.13 Designated as (Subpart A).....	63268
18.401—18.545 (Subpart D) added.....	63268
21.40 (b) revised.....	59312
21.42 Footnote 1 revised.....	59312
21.1032 (a) revised.....	67092
21.1040 (d) revised.....	59312
21.1042 (a) revised; (d) and (e) redesignated as (f) and (g) and revised; new (d) and (e) added.....	59312
21.4100 (a) heading and (c) added; (b) revised.....	67092
21.4101 Revised.....	67092
21.4102 Revised.....	67092
21.4103 Revised.....	67092

NOTE: Symbol (*) refers to 1980 page numbers.

NOTE: Symbol (†) refers to 1981 page numbers.

38 CFR—Continued

Chapter I—Continued	45 (46†) FR Page
21.4104 Revised.....	67092
21.4106 Removed.....	67093
21.4131 (g) revised.....	59313
21.4136 (i) revised.....	48885
21.4137 (f) revised.....	48885
21.4138 (f) (2) and (3) revised; (f) (4) through (7) added.....	48886
(f) revised.....	†20673
21.4200 (b)(5) revised; (b)(6) added.....	48887
21.4233 (a)(1) amended.....	67093
21.4234 (a) introductory text removed; (b), (c), and (d) revised; cross reference added.....	67093
21.4262 (b) (6), (7), and (c) (2), (4), and (7) amended.....	51778
21.4263 Revised.....	51778
21.4264 Revised.....	†16101
21.4270 (b) revised.....	73479
21.4275 (a) revised.....	73480
21.4278 Revised and cross reference added.....	67093
21.5058 (a) revised.....	†29474
21.5130 (c) and (e) revised.....	†32024
21.5135 Added.....	†32024
21.5138 (b) (8) through (11) redesignated as (b) (9) through (12); new (b)(8) added; (c) revised.....	†32024
26 Added.....	62800
36 Compliance with EO 12185....	57992
Incorporation by reference approvals.....	†33980
36.4212 (a) revised	49930, 63812, 79803
(a) revised.....	†25446
36.4253 (b)(5)(iii) amended; (c)(4)(i) revised.....	55720
36.4301 (c) added; (n) revised.....	53808
36.4303 (a), (b), and (d) revised; (f) amended.....	53808
36.4311 (a) revised.....	56344
(a) and (b) revised.....	63842, 79803
(a) revised.....	†16687, 25444
(a) and (b) revised.....	†26483
36.4312 (d)(6)(i)(B) and (iii) revised; (d)(6)(iv) added.....	53809
36.4335 (a) and (b) revised.....	53809
36.4350 (c)(4)(i) revised.....	55720
36.4360a Amended; incorporation by reference.....	77028
36.4503 (a) revised	56344, 63842, 79803
(a) revised.....	†16687, 25444, 26484

Title 38—Pensions, Bonuses, and Veterans' Relief

1981-1982

(Regulations published from July 1, 1981 through June 30, 1982)

38 CFR

46 (47Δ) FR
Page

Chapter I

21.4131 (e) revised.....	62060
21.4135 (o) revised.....	48196
21.4136 (j)(2)(iii) amended; (j)(2)(iv) revised.....	43667
(k) revised.....	48664
21.4137 (g)(4) amended; (g)(5) revised.....	43667
21.5040 (a) revised.....	59247
21.5060 (b) revised.....	59247
21.5065 Added.....	59247
36.4204 (a) (4), (5), and (b) amended; (a)(6) and (d)(7) added; (e) revised.....	43669
(c) revised.....	Δ12346
36.4205 (a), (b), and (f) revised....	43669
36.4206 Revised.....	43670
36.4209 (b) introductory text, (c) and (g) revised.....	43670
36.4212 (a) revised.....	42850
(d) added.....	43670
(a) revised.....	46572, 57042
(a) revised.....	Δ9827
36.4214 Revised.....	43670
36.4216 (g) and (i) amended.....	43670
36.4220 (a) introductory text and (a)(1) revised.....	43670
36.4221 (b) and (d) amended.....	43671
36.4223 Added.....	43671
36.4232 (a)(4) amended; (a)(5) added; (c) revised.....	43671
36.4233 (a)(3), (b), and (d) amended.....	43671
36.4234 (a) introductory text amended.....	43671
36.4235 (a), (b), and (d) amend- ed.....	43671
36.4254 (a)(4) amended; (c) re- vised.....	43671
36.4275 (a) revised.....	51386
36.4282 (c), (d), (e), and (f) amended.....	Δ12965
36.4283 (a) introductory text and (j) amended; (f), (h) in- troductory text and (l) re- vised.....	Δ12965

38 CFR—Continued

46 (47Δ) FR
Page

Chapter I—Continued

36.4300—36.4393 Note amend- ed.....	Δ15139
36.4300 Heading and (a) amend- ed.....	Δ15139
36.4301 (ff)(2) amended; (2a) re- vised.....	43671
Amended.....	Δ15139
36.4302 (e) amended; (a), (c), and (i) revised.....	43672
(d) amended; (f) revised.....	Δ15139
36.4303 (g) introductory text re- vised.....	43672
(a)(2) and (b) amended.....	Δ15139
36.4306 (a) and (b) introductory text and (c) revised.....	43672
36.4306a Added.....	43672
36.4308 (b) revised.....	43673
(a) revised; (e) added.....	51386
36.4309 (a) and (b) revised; (e) added.....	Δ15139
36.4311 (a) revised.....	42849
(d) added.....	43673
(a) and (b) revised.....	46573
(a) revised.....	51741
(a) and (b) revised.....	57042
(a) revised.....	Δ4257
(a) and 9b) revised.....	Δ9827
36.4312 (d)(6)(i)(A) amended.....	43673
36.4324 (f)(3) amended; (g) and (h) removed.....	43673
36.4329 Revised.....	43673
36.4336 (a) (1) and (2) revised....	43673
(a)(2) revised.....	Δ15139
36.4342 (b) and (d) amended.....	43673
36.4343 Heading revised.....	43673
36.4401 (a), (c), and (f) amend- ed; (e) revised; (h) added.....	43673
36.4402 Revised.....	43673
36.4403 Revised.....	43673
36.4404 Revised.....	43674
36.4405 Amended.....	43674
36.4406 Amended.....	43674
36.4408 (b) revised.....	43674
36.4409 Amended.....	43674
36.4410 Introductory text and (b) revised.....	43674
36.4501 (a) and (e) amended.....	43674
36.4502 Revised.....	43675
36.4503 (a) revised.....	42849, 43675, 46573, 51741, 57042
(a) revised.....	Δ4257, 9827
36.4505 Revised.....	43675
36.4506 Revised.....	43675

NOTE: Symbol (Δ) refers to 1982 page numbers.

List of CFR Sections Affected

38 CFR—Continued

Chapter I—Continued

	46 (47Δ) FR Page
36.4507 (a) introductory text and (c) revised.....	43675
36.4508 (a), (b), (c) introductory text and (3) amended.....	43675

38 CFR—Continued

Chapter I—Continued

	46 (47Δ) FR Page
36.4519 (a)(6) and (c) added.....	43675
36.4520 (b) and (d) amended.....	43675
36.4523 Revised.....	43675
36.4525 Amended.....	43676

NOTE: Symbol (Δ) refers to 1982 page numbers.

